

## **Exhibit D**

**STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005**

SHEET 1

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CRIMINAL PART  
ESSEX COUNTY  
INDICTMENT NO. 03-05-1830  
APP. DIV. NO.

STATE OF NEW JERSEY,	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	of
vs.	)	JURY TRIAL
	)	
NAEEM MILLER,	)	
	)	
Defendant.	)	

Place: Essex Co. Courthouse  
50 West Market St.  
Newark, N.J. 07102

Date: March 29, 2005

BEFORE:

HONORABLE THOMAS R. VENA, J.S.C. and JURY

TRANSCRIPT ORDERED BY:

LOUIS G. GONNELLA, ESQ. (Office of the Public Defender,  
Appellate Section, 9th Floor, 31 Clinton St., Box 46003,  
Newark, N.J. 07101)

APPEARANCES:

GREGORY DeMATTIA, ESQ., Assistant Prosecutor  
Attorney for the State

JONATHAN D. GORDON, ESQ.  
Attorney for Defendant

Transcriber Catherine Weigel  
ELITE TRANSCRIPTS, INC.  
14 Boonton Avenue  
Butler, New Jersey 07405  
(973) 283-0196  
Video Recorded  
Operator, Kathy Fagan

**Elite Transcripts, Inc.**

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 2

2

## I N D E X

Witness	Direct	Cross	Redirect	Recross
FOR THE STATE				
Steven Bright	3			
Lila Perez	17	28		
Stacy Davis	30	63	66	
Stanley Rosa	68			
Kyle Kemp	75			
Timothy Charles	76			
Exhibits				
S-21 & 21A Six photographs/envelope				88
S-20 Photograph				87
S-30 Wanted poster				86
S-24 Bright report				
S-4A Photograph	5			87
S-4A Blowup of S-4	7			87
S-7 - S-14 Photographs	9			87
S-17 Autopsy report	19			
S-18 Diagrams	19			87
S-15 Ballistics photo	27			87
S-16 Ballistics photo	27			87
S-25 Photograph	39			89
S-26 Photo Array Preamble	71			
S-27 Photograph	78			90
MOTION FOR ACQUITTAL ARGUMENT				
BY: MR. GORDON	92			
BY: MR. DeMATTIA	93			
DECISION	93			
CHARGE CONFERENCE	94			

Colloquy / Bright - Direct 3

1 THE COURT: -- returned in this matter, which

2 is entitled STATE OF NEW JERSEY VS. NAEEM MILLER. All

3 the jurors are now present, as is the defendant and

4 counsel for both the State and Mr. Miller. We are

5 ready to proceed from where we left off, and that would

6 be with Mr. DeMattia calling his next witness.

7 MR. DeMATTIA: Steve Bright.

8 THE COURT: Steve Bright to the stand,

9 please.

10 COURT OFFICER: Raise your right hand.

11 S T E V E N B R I G H T, STATE'S WITNESS, SWORN

12 COURT OFFICER: State your full name for the

13 record.

14 THE WITNESS: Steven Bright.

15 THE COURT: Please be seated. Good morning.

16 THE WITNESS: Good morning.

17 THE COURT: Mr. DeMattia?

18 DIRECT EXAMINATION BY MR. DeMATTIA:

19 Q Sir, by whom are you employed?

20 A The Essex County Prosecutor's Office.

21 Q In what capacity?

22 A I'm Lieutenant in charge of the Crime Scene Unit.

23 Q And for how long have you been the Lieutenant

24 in charge of Crime Scene Unit?

25 A Since August of 1997.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 3

Bright - Direct

4

1 Q Prior to that?  
2 A I was an investigator with the Crime Scene Unit.  
3 Q For how long?  
4 A Since November of 1991.  
5 Q And prior to that?  
6 A I was in the Homicide Unit. Actually, I was  
7 working double-duty doing homicide investigations and  
8 crime scene investigations.  
9 Q And for how long?  
10 A I was doing that for a year.  
11 Q What are some of the duties related with your  
12 position as Lieutenant of Crime Scene Unit?  
13 A Well, I supervise -- Well, presently I'm  
14 supervising six investigators, and respond to major  
15 crimes such as homicides, police shootings, police  
16 pursuits with fatalities, some burglaries, you know, on  
17 special-interest cases, but mainly homicides and police  
18 shootings.  
19 Q And when you get to the scene what are some  
20 of the specific duties that you perform?  
21 A What we do at the scene is first we do a walk-  
22 through to try to identify any potential evidence, then  
23 we photograph the scene, documenting locations,  
24 photographically documenting the evidence that's at  
25 that scene, and we collect the evidence, process

Bright - Direct

5

1 evidence for latent fingerprints.  
2 Q Did you have occasion to -- you yourself --  
3 respond to the scene of a shooting outside Toby's  
4 Lounge at 966 Bergen Street, City of Newark, on  
5 December 16th of 2001?  
6 A Yes.  
7 Q And as a result of your responding there --  
8 You were in charge of processing the crime scene?  
9 A Yes.  
10 Q And pursuant to your investigation did you  
11 compile any type of report?  
12 A Yes, I did.  
13 Q And that is typical in any case that you  
14 investigate?  
15 A Yes, it is.  
16 Q Would you like to have that report before  
17 you?  
18 A If I could, yes.  
19 MR. DeMATTIA: Judge, it's been previously  
20 marked S-24 for identification, a three-page report by  
21 Lieutenant Steven Bright.  
22 THE WITNESS: Thank you.  
23 BY MR. DeMATTIA:  
24 Q When you got to the scene, Lieutenant, what  
25 happened?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 4

Bright - Direct

6

1 A When I got to the scene I met with Investigator  
2 Ben Powell of this office's homicide squad and  
3 Detective LeBella from Newark Police, and they gave me  
4 a brief synopsis of what may or may not have occurred  
5 at that location that night.

6 Q Did you proceed to do your walk-through, as  
7 you indicated just a few minutes ago?

8 A Yes.

9 Q What did you discover upon your walk-through?

10 A During the walk-through they pointed out six shell  
11 casings which were on the street in front of Toby's  
12 Lounge, 966 Bergen Street. The shell casings, there  
13 was a black hat and a yellow t-shirt on the street  
14 also. I conducted a further search and I located two  
15 additional shell casings, upon which time I documented  
16 the locations by taking measurements from two fixed  
17 points and then collected the evidence.

18 Q What fixed points did you use to document the  
19 distance?

20 A If I can refer to my report, I used the -- There  
21 was a lamp post on the southeast corner of Bergen  
22 Street and Renner Avenue, and I used the southeast curb  
23 line of Bergen Street.

24 Q Okay. And as part of your duties you  
25 indicate that you take photographs. Did you photograph

Bright - Direct

7

1 some of the evidence that you just referred to, such as  
2 the shell casings?

3 A I photographed all of the evidence.

4 Q Okay. With regard to the shell casings how  
5 many in total then did you discover at the scene?

6 A Eight.

7 Q And then did you take general photographs of  
8 the scene itself?

9 A Yes, I did.

10 MR. DeMATTIA: All right. Your Honor, I'd  
11 like Lieutenant Bright to take a look at what has been  
12 marked S-4 for identification, which is the photograph  
13 of the front of the location, and then S-7 through 14,  
14 which are photographs of each individual shell casing  
15 on the ground. I don't know if Mr. Gordon would like  
16 to see them.

17 BY MR. DeMATTIA:

18 Q Take a quick look at them. Okay. With  
19 regard specifically to what's been marked starting with  
20 S-7 through S, I guess, 14, they refer to each  
21 individual item of what, Lieutenant?

22 A Each of our shell casings.

23 Q And in your report you documented I guess  
24 distances from those two fixed points where they were  
25 located?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

**STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005**

SHEET 5

Bright - Direct

8

1 A That's correct.

2 Q Okay. With regard to the photograph S-4,  
3 what does the photograph S-4 depict?

4 A s-4 depicts an overall photo of the scene itself  
5 showing the locations of the evidence that was at the  
6 scene.

7 Q Does S-4 show the yellow markers with regard  
8 to each of the shell casings?

9 A Yes.

10 Q What type of shell casings were they, by the  
11 way?

12 A I believe 9-mm shell casings.

13 Q And also there you had mentioned a hat and a  
14 yellow shirt. Does S-4 depict the hat and yellow  
15 shirt, also?

16 A Yes.

17 Q I guess that would be S-9 and S-10?

18 A Those photos aren't here.

19 Q Okay. No problem. Evidence marker, I should  
20 say, 9 and 10.

21 A Right. Yes, they do.

22 Q All right. Now, turning around to what's  
23 been placed on the bulletin board behind you,  
24 Lieutenant, it's been marked S-4A, which is a blowup of  
25 S-4. Does that depict exactly what's in S-4, for the

Bright - Direct

9

1 record?

2 A Yes, it does.

3 Q It's only an enlargement of S-4.

4 A Yes.

5 Q Okay. And with regard to the clarity, or  
6 brightness, or darkness, does that actually depict what  
7 was at the scene that evening, of the photograph  
8 itself?

9 A The photograph is -- it's somewhat blurred, but  
10 that's due to the enlarging, and the darkness of it is  
11 due to the exposure of the film. It was actually  
12 better-lit than this. Bergen Street is a -- it's a  
13 very busy -- very busy street, and pretty much well-  
14 lit.

15 Q If you can stand up maybe with your back  
16 toward the judge, with regard to the corner over here,  
17 you had mentioned well-lit. What is this right in  
18 front of the tavern?

19 A This is a street light.

20 Q And was it working that evening?

21 A Yes.

22 Q Now, the yellow markers with circles around  
23 them indicate what items?

24 A These are all shell casings.

25 Q And is there a car parked right in front?

**Elite Transcripts, Inc.**

14 Boonton Avenue, Butler, New Jersey 07405

973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 6

Bright - Direct 10

1 A There's a car here. 8 and 10 were the -- 9 and 10  
2 were the -- was the black hat and the yellow t-shirt.  
3 Q You can sit down now, Lieutenant. I'll try  
4 not to have you hop back and forth.  
5 With regard to the shell casings itself would  
6 that be indicative of any type of weapon that was used?  
7 A Generally a semi-automatic.  
8 Q Describe what a semi-automatic is?  
9 A Semi-automatic handgun actually is -- it's loaded  
10 -- the bullets are loaded in a magazine. I don't know  
11 if I could -- if I could show a magazine at all. I'm  
12 not --  
13 MR. DeMATTIA: Your Honor, would he have  
14 permission to just display his weapon?  
15 THE WITNESS: Not the weapon, the magazine.  
16 THE COURT: Do you have one with you?  
17 THE WITNESS: Yes.  
18 THE COURT: Officer, would you please clear  
19 the weapon?  
20 COURT OFFICER: The weapon is clear.  
21 MR. DeMATTIA: Thank you, Judge.  
22 BY MR. DeMATTIA:  
23 Q If you, Lieutenant, could just hold that up  
24 for the jury in its normal closed position.  
25 A This is a semi-automatic handgun.

Bright - Direct 11

1 Q And you spoke of a clip just a couple of  
2 seconds ago?  
3 A Actually the magazine.  
4 Q Oh, I'm sorry, magazine.  
5 A A semi-automatic handgun the bullets are loaded in  
6 a magazine, as opposed to a revolver where the bullets  
7 are loaded in a cylinder, which is enclosed. The  
8 cylinder opens up, you load it, close the cylinder and  
9 as you fire the rounds go either clockwise in some  
10 makes and counter-clockwise on others. With an  
11 automatic, semi-automatic, when you fire the round,  
12 with each round the slide pops back -- it slides back,  
13 the round is ejected -- the shell casing is ejected,  
14 the round exits the front of the weapon, but with each  
15 round, like I said, the slide pops back and  
16 subsequently loads another round into the chamber and  
17 you're ready to fire again.  
18 Q And that magazine goes in what portion of the  
19 weapon?  
20 A It goes in the bottom of the handgun.  
21 Q That's how it's loaded.  
22 A Yes.  
23 Q Okay. With regard -- And that ejects  
24 casings. With regard to the revolver, the revolver,  
25 does that eject any casings?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 7

Bright - Direct

12

1 A It doesn't eject them until you eject them.

2 Q In other words, open up the rounds?

3 A Open up and dump them.

4 Q And does -- What type of look does a  
5 revolver have when compared with your weapon?

6 A A revolver is, depending on the size, you have  
7 like a short 2-inch barrel revolver, but on the most  
8 part a revolver is long, has just a single barrel, not  
9 boxed, like this is, just enough that the round is  
10 going to pass through. This is more boxy. A revolver  
11 looks like something you would see in a cowboy movie,  
12 you know, a western.

13 Q And once you collected the evidence, sir,  
14 what did you do with it?

15 A What I did was I took the -- the casings back to  
16 my office where they were processed for latent  
17 fingerprints.

18 Q And what do you mean by that? Explain why  
19 you did that?

20 A As a general -- general practice what we do is we  
21 process the shell casings, being that they are loaded  
22 by hand into the -- well, in a semi-automatic into the  
23 magazine or a revolver, they would be loaded into the  
24 cylinder, everything is done by hand, so in the event  
25 that, you know, the individual left fingerprints on

Bright - Direct

13

1 these casings or cartridges we process them for latent  
2 fingerprints.

3 Q And your success rate with the technology of  
4 processing cartridges or casings?

5 A In my 13-plus years of doing crime scene  
6 investigations we have never -- I have never, or anyone  
7 in my unit, has never recovered an identifiable latent  
8 fingerprint from a spent shell casings.

9 Q And why is that? What happens when the  
10 bullet is fired?

11 A Well, first I would have to more or less explain  
12 what a latent fingerprint is, which is actually -- A  
13 latent fingerprint is made up of 99 percent water, 1  
14 percent oils, which are secreted through the pores on  
15 your hands. Namely the fingertip areas is what we use  
16 for identifying areas of -- what we use to identify  
17 latent fingerprints, because they have the  
18 characteristics we're looking for and they're the areas  
19 of your fingers that you are most likely to come in  
20 contact with a surface. To touch something you have to  
21 touch it with -- to touch and feel you have to use your  
22 fingertips as opposed to the inner digits of your  
23 fingers. You can't really -- you can't pick up with  
24 this. You need your fingertips to do that, so that's  
25 where your identifying qualities we look for.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 8

Bright - Direct

14

1 Now, what happens is when you come in contact with  
2 a surface you're leaving oils and water on that  
3 surface. Whether or not they are identifiable is yet  
4 to be determined. You touch a smooth, hard surface and  
5 lift your -- like this counter -- and you lift your  
6 hand off there's a very good possibility that you left  
7 identifiable fingerprints. Put your hands on this  
8 counter and pull it away, you've smudged or smeared any  
9 identifying characteristics that -- that you could have  
10 left on that surface.

11 Now, we use different chemical processes to try to  
12 recover these latent fingerprints. With latent  
13 fingerprints to identify them there's different  
14 characteristics. There's bifurcations, whirls, ridge  
15 endings, that we look for. The possibility of some --  
16 And what we generally use is nine points of  
17 identification. With nine points of identification the  
18 possibility that someone else on this planet has the  
19 same fingerprint as you is say a million times the  
20 population of the earth, and so that possibility puts  
21 it out of the realm that someone else here on this  
22 planet is going to have your fingerprint, your same  
23 fingerprints. Identical twins don't have the same  
24 fingerprints, where they have the same DNA.

25 Q With regard to all that information now add

Bright - Direct

15

1 in the factor of the bullet being shot through a semi-  
2 automatic.  
3 A Now, when we try to recover latents from a shell  
4 casing this shell casing when it goes -- well, what the  
5 shell casing and bullet goes through inside of a gun is  
6 an explosion. Now, when you take into consideration  
7 that water -- and remember a fingerprint is 99 percent  
8 water, water boils at 212 degrees. The explosion  
9 caused in the chamber of a weapon -- chamber of this  
10 gun -- is in excess of 300 degrees. When you bring a  
11 temperature up to 300 degrees -- you bring water up to  
12 300 degrees that causes -- you see it when you're  
13 boiling water in a pot -- it causes evaporation, which  
14 is -- you know, a fingerprint is more -- more than  
15 likely going to cook off or evaporate off the surface  
16 of a shell casing.

17 Q And in this particular case you had performed  
18 these tests, as just described?

19 A Yes.

20 Q And your result was not significant at all.

21 A Nothing.

22 MR. DeMATTIA: All right. I have no further  
23 questions, Your Honor.

24 THE COURT: Cross-examine.

25 MR. GORDON: I have no questions of this

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 9

Colloquy

16

1 witness, Your Honor.

2 THE COURT: Thank you, Lieutenant. You're  
3 excused.

4 MR. DeMATTIA: I just need to get my exhibits  
5 down and then I need a moment to confer with the  
6 doctor, Perez, who is my next witness, to see if she's  
7 ready to proceed.

8 THE COURT: Okay. We're going to take our  
9 early break then, ladies and gentlemen. You may be  
10 taking more breaks than -- than -- than scheduled just  
11 to enable us to mechanically ensure the presence of  
12 witnesses, try to inconvenience you as little as  
13 possible. So we'll -- we'll take a 10-minute break  
14 now. Okay? See you back here at 10:45.

15 (Recess)

16 THE COURT: We'll continue. Mr. DeMattia,  
17 please call your next witness.

18 MR. DeMATTIA: Lila Perez.

19 THE COURT: Lila Perez to the stand, please.

20 COURT OFFICER: Step up and remain standing.  
21 Raise your right hand, ma'am.

22 L I L A P E R E Z, STATE'S WITNESS, SWORN

23 COURT OFFICER: State your full name for the  
24 record.

25 THE WITNESS: Lila Perez, P-e-r-e-z.

Perez - Direct

17

1 THE COURT: Good morning, Dr. Perez. Please  
2 be seated.

3 THE WITNESS: Good morning, Your Honor.

4 THE COURT: Mr. DeMattia?

5 DIRECT EXAMINATION BY MR. DeMATTIA:

6 Q Good morning, ma'am.

7 A Good morning.

8 Q By whom are you employed?

9 A I'm employed by the Division of Criminal Justice,  
10 Regional Medical Examiner.

11 Q For how long?

12 A I have been employed by the State since 1986, and  
13 by Atlantic County Medical Examiner's Office from 1992  
14 to 1998, and I am the Regional Medical Examiner for  
15 Cape May and Cumberland County since 2003.

16 Q And around the time of 2001 who were you  
17 working for, Doctor?

18 A Yes, I was working for the Newark Regional Medical  
19 Examiner's Office.

20 Q And obviously you're a medical doctor. What  
21 type of training did you receive and educational  
22 background do you have?

23 A I was graduated in 1972 at the National University  
24 of Leone, Nicaragua. I did my internship in Nicaragua  
25 and also at Queens General Hospital in New York City.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 10

Perez - Direct 18

1 I did four years of anatomic and clinical pathology  
2 residency in New York City, and a fellowship in  
3 surgical pathology at Beth Israel Hospital. I started  
4 working as a Medical Examiner in 1981 for the Chief  
5 Medical Examiner's Office in New York.

6 Q And do you have any type of certifications?  
7 A Yes.

8 Q What are they?  
9 A I am board-certified in Anatomic, Theoretical and  
10 Forensic Pathology.

11 Q And have you ever been qualified before in a  
12 Superior Court in New Jersey, such as this, as an  
13 expert in Forensic Pathology?  
14 A Yes, I have.

15 Q Approximately how many times?  
16 A Dozens of times.

17 Q And allowed to testify, also?  
18 A I was allowed to testify, as well.

19 Q How many times?  
20 A Hundreds of times.

21 MR. DeMATTIA: I would proffer Dr. Perez as  
22 an expert in medical forensic pathology at this point,  
23 Your Honor.

24 THE COURT: Mr. Gordon?  
25 MR. GORDON: You're Honor, I'm thoroughly

Perez - Direct 19

1 familiar with Dr. Perez. I accept her as an expert in  
2 this case.

3 THE COURT: Okay. Dr. Perez is accepted once  
4 again by this court as an expert in the field of  
5 Forensic Pathology. You may continue, Mr. DeMattia.

6 MR. DeMATTIA: Thank you.

7 BY MR. DeMATTIA:

8 Q Dr. Perez, did you have occasion to become  
9 involved in an autopsy of a person by the name of  
10 Timothy Phillips?  
11 A Yes.

12 Q And with regard to the autopsy did you, in  
13 fact, then construct reports or compile an autopsy  
14 report and related paperwork?  
15 A Yes, I had.

16 MR. DeMATTIA: Your Honor, I'd like to  
17 approach Dr. Perez with S-17 for identification and S-  
18 18, S-17 being purportedly being the autopsy report and  
19 S-18 being diagrams. If Dr. Perez could take a look at  
20 that.

21 THE WITNESS: Yes.

22 BY MR. DeMATTIA:

23 Q Starting with the autopsy report, whose  
24 number is S-17, do you recognize that?  
25 A S-17 is the autopsy report that I prepared on

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 11

Perez - Direct

20

1 Timothy Phillips that includes the microscopic  
2 examination, the toxicology report and the report of  
3 the medical investigator.

4 Q Does that have an identification number?

5 A Yes, it's 07012324.

6 Q With regard to S-18 can you identify that for  
7 The Court?

8 A This is a diagram of the body that I prepare,  
9 front, back and side, also with the identifying number  
10 07012324.

11 Q And, Doctor, prior to entering the room I  
12 displayed for you what's behind you at this time, S-18A  
13 and S-18B. What are they?

14 A This is an enlarged copy of the diagram that I  
15 prepared during the autopsy.

16 Q Which you just described as S-18.

17 A Yes.

18 Q Okay. Doctor, can you tell the jury what an  
19 autopsy is?

20 A An autopsy consists of an external and internal  
21 examination. By external examination I do note and  
22 document injuries, identifying the scars, tatoos and  
23 appearance of the body. Internal examination is done  
24 after you open the head, the chest and the abdomen to  
25 document and identify the lesions, disease, and to

Perez - Direct

21

1 determine the cause and manner of death.

2 Q And during the course of an autopsy if there  
3 is any evidence present what do you do?

4 A If during the autopsy I recover evidence such as  
5 bullet or knife or other objects it is given to the  
6 Prosecutor's Office investigator.

7 Q Did you, in fact, perform during your autopsy  
8 both an external examination and then an internal  
9 examination upon the remains of Mr. Phillips?

10 A Yes, I did.

11 Q With regard to the external examination,  
12 Doctor, was there any findings of significance that you  
13 would like to report to the jury?

14 A Yes, the body was approximately 69-1/2-inches  
15 tall, had a weight of 172 pounds. He had marked  
16 treatment. He was taken to the hospital, and he had  
17 several gunshot wounds on the shoulder, on the back, on  
18 the face and on the hand.

19 Q Okay. And then from there did you conduct an  
20 internal examination?

21 A Yes. The internal examination showed that the  
22 bullets went through the body, especially along the  
23 aorta, that is large blood vessel that runs through the  
24 body, the musculature of the shoulder, the clavicle,  
25 and caused hemorrhage, an internal hemorrhage, internal

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405

973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 12

Perez - Direct

22

1 bleeding.

2 Q And as a result of your internal examination  
3 did you document or number your significant findings?

4 A Yes, on the perforations produced by bullets were  
5 number 1 through 8.

6 Q Which would indicate a total of eight gunshot  
7 wounds?

8 A Yes.

9 Q Okay. Doctor, however you're more  
10 comfortable, if you would like to stand and -- and talk  
11 at the same time, but I would like you to detail your  
12 significant findings with the -- with regard to the  
13 eight wounds that you said you found.

14 A Yes. I will get up and will go over the wounds.

15 Q Please, with regard to I guess Wound No. 1.

16 A Wound No. 1 was located on the left upper arm. It  
17 was round, did not have any stippling, no smoke, no gun  
18 powder residue around the wound, entered the muscle of  
19 the arm and fractured the bone of the arm that is  
20 called the humerus, then travels backwards into the  
21 scapula, the backbone on the arm, and fragmented.  
22 Those fragments we recovered are consistent of a  
23 bullet, lead bullet, and also jacket fragments. The  
24 direction of this track was front to back downwards and  
25 towards the right.

Perez - Direct

23

1 Q With regard to Wound No. 2.

2 A Wound No. 2 was located lateral to the nipple. It  
3 went through the chest cavity, fractured the inferior  
4 border of the third rib, went through the lung, the  
5 left upper lobe of the lung, through the aorta and exit  
6 in the back, on the mid-line of the back. I'm sorry.  
7 It was recovered on the back. That bullet that was  
8 recovered on the back was a fully-jacketed large-  
9 caliber bullet.

10 Q All right, Doctor. And with regard to Wound  
11 No. 1 and Wound No. 2, in fact, they were the only  
12 wounds where you recovered any type of ballistics  
13 evidence from.

14 A Correct.

15 Q I'll show that to you in a few minutes. With  
16 regard to Wound No. 3?

17 A Wound No. 3 was an elongated wound that involves  
18 only the skin and superficial subcutaneous tissue, was  
19 very superficial and did not cause any fracture of the  
20 nose, and could not be determined the direction.

21 Q Is that what is considered a graze wound?

22 A This is considered a graze wound.

23 Q With regard to Wound No. 4, if -- if it's  
24 indicated on that diagram, Doctor. If not we can  
25 change it.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 13

Perez - Direct

24

1 A Okay.

2 Q Wound No. 4? I'll -- I'll help you, Doctor.

3 A Wound No. 4 was in the back of the neck, at the  
4 mid-line of the neck. It went through and through of  
5 the cervical spine, between the first and second  
6 cervical spine, and caused hemorrhage of the base of  
7 the brain. It exit on the front of the cervical spine  
8 and went through the throat, through the esophagus, and  
9 fractured this -- the right side of the mandible.  
10 There was a small fragment recovered there and there  
11 was no bullet recovered. So the direction of this  
12 bullet was back to front and then downwards.

13 Q With regard to Wound No. 5.

14 A Wound No. 5 is also considered a graze wound like  
15 Wound No. 3, meaning that it did not go into the body,  
16 it just incised the skin and subcutaneous tissue, and I  
17 could determine the direction being from above  
18 downwards, from up below.

19 Q Consistent with a graze wound, once again?

20 A Yes.

21 Q All right. With regard to Wound No. 5. Now  
22 Wound No. 6, Doctor.

23 A Wound No. 6 was located on the back of the right  
24 shoulder. As you can see there are pinpoint dots  
25 around the hole of entrance. That represents

Perez - Direct

25

1 stippling. Stippling is gun powder residue. The  
2 bullet went through and through the trapezius muscle,  
3 that this is the muscle, and fractured the distal part,  
4 or the end of the right clavicle. So this wound was  
5 from front -- excuse me -- back to front and no bullet  
6 was recovered.

7 Q Doctor, you mentioned so far this is the only  
8 wound with regard to stippling or gun powder. Could  
9 you tell the jury what that means and what that is an  
10 indication of?

11 A The significance of the presence of gun powder  
12 residue is that the gun was fired at close range.

13 Q And by close range can you actually say what  
14 type of range we're talking about?

15 A A few -- up to -- up to 1 foot you can see, you  
16 know, a stippling, 18 inches -- 12 to 18 inches you may  
17 see the -- the residue.

18 Q Once it starts passing like 18 inches from  
19 the target do you typically get any stippling?

20 A Typically not, but that will depend on the type of  
21 weapon and also the type of ammunition.

22 Q With regard to wound -- Would you like a  
23 glass of water, Doctor?

24 A Yes.

25 Q I thought so. With regard to -- If you can

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 14

Perez - Direct 26

1 proceed? Would you like to proceed?

2 A Yes.

3 Q Okay. With regard to Wound No. 7.

4 A Would No. 7 was in the region of the cheek and was

5 elongated. There was no stippling, no smoke, and went

6 underneath the skin and exit on the lip and caused

7 lacerations of the upper and lower lip on the right

8 side, so it was in and out and no bullet was recovered.

9 Q Finally, Doctor, the final wound, which was

10 Wound No. 8.

11 A Would No. 8 was located on the left hand at the

12 base of the third finger and caused an irregular

13 abrasion, marginal abrasion, no stippling, no smoke, no

14 soot. It went upwards and exit at the base of the left

15 thumb and also caused an L-shaped wound and fractured

16 the finger.

17 Q Is that type of wound on the hands, can that

18 be referred to as any particular type of wound?

19 A It could be called defensive wounds if the person

20 raised the hand to fend the assailant, yes.

21 Q I think you can have a seat now, Doctor.

22 A Thanks.

23 Q Now, in preparation for your testimony,

24 Doctor, were you shown photographs of recovered

25 ballistics evidence?

Perez - Direct 27

1 A Yes, I did.

2 Q S-15 and S-16 for identification, if the

3 doctor can take a look at that.

4 A S-16 is the photograph of an envelope. The

5 envelope has an addressograph that includes the name of

6 the deceased, the case number, my initials, and the

7 date of the autopsy. Handwritten by me it says

8 projectile from back. And the photo also shows a

9 jacketed bullet that I recovered from the back of the

10 deceased.

11 Q And that is what you refer to in the

12 description of one of the wounds.

13 A Yes.

14 Q Okay. Next photograph, Doctor, was labeled

15 S-15 for identification. Do you recognize that?

16 A Yes. This is the photograph of an envelope with

17 the same information with the name, the case number,

18 and handwritten says fragments from left shoulder,

19 ankles and see the picture with jacket -- fragments of

20 jackets and also a formed piece of lead bullet.

21 Q And, once again, this was recovered by you

22 during the course of the autopsy as you described

23 previously and from one of the wounds.

24 A Yes.

25 Q Doctor, were they any further significant

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 15

Perez - Direct / Cross 28

1 internal observations that you'd like to point out to  
2 the jury?  
3 A Besides the injuries that I described during the  
4 autopsy there were no other significant disease or any  
5 other type of injuries in the rest of the body.  
6 Q Then, Doctor, within a reasonable degree of  
7 medical certainty were you able to arrive at a cause of  
8 death for Mr. Phillips?  
9 A Yes.  
10 Q And what was that?  
11 A The cause of death was multiple gunshot wounds.  
12 Q And the manner of death.  
13 A The manner of death I classified it as a homicide.  
14 MR. DeMATTIA: Judge, I have no further  
15 questions of Dr. Perez. Thank you.  
16 THE COURT: Cross-examine.  
17 MR. GORDON: Thank you, Your Honor.  
18 CROSS-EXAMINATION BY MR. GORDON:  
19 Q Good morning, Doctor.  
20 A Good morning.  
21 Q Doctor, you have no way to know in this case  
22 what the sequential order was of each of these wounds  
23 being received by the decedent, is that correct?  
24 A That's correct.  
25 MR. GORDON: Thank you. I have nothing

Colloquy 29

1 further, Your Honor.  
2 THE COURT: Anything else? Thank you very  
3 much, Doctor. You're excused.  
4 THE WITNESS: Thank you.  
5 THE COURT: Do we need to take another break?  
6 MR. DeMATTIA: Probably that would be  
7 advisable, yes.  
8 THE COURT: All right. We're going take  
9 another break, ladies and gentlemen, between witnesses  
10 in order to assure the availability of a witness.  
11 We'll take another 10-minute break.  
12 (Recess)  
13 THE COURT: We're going to continue. Call  
14 your next witness, please, Mr. DeMattia.  
15 MR. DeMATTIA: Stacy Davis.  
16 THE COURT: Stacy Davis to the stand, please.  
17 COURT OFFICER: Remain standing for a minute.  
18 Okay?  
19 S T A C Y D A V I S, STATE'S WITNESS, SWORN  
20 COURT OFFICER: State your full name for the  
21 record.  
22 THE WITNESS: Stacy Davis.  
23 COURT OFFICER: Be seated.  
24 THE COURT: Good morning, Mr. Davis.  
25 THE WITNESS: Good morning.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 16

Davis - Direct 30

1 THE COURT: Mr. DeMattia?  
2 MR. DeMATTIA: Thank you, Judge.  
3 DIRECT EXAMINATION BY MR. DeMATTIA:  
4 Q Sir, can you please tell us your full name?  
5 A Stacy Davis.  
6 Q And how old are you?  
7 A 38.  
8 Q All right. Mr. Davis, I'm going to ask to  
9 keep your voice up loud enough so that the people at  
10 the end of the jury can hear what you have to say. All  
11 right, sir?  
12 Now, Mr. Davis, I want to take your attention  
13 back to December 16th of 2001, the early morning hours  
14 thereof. Do you recall what location you were at?  
15 A I was on Bergen Street.  
16 Q Do you happen to know the type of place you  
17 were at on Bergen Street?  
18 A I was at a bar.  
19 Q Do you remember the name of the bar?  
20 A Roland's.  
21 Q You knew it as Roland's. Had you ever been  
22 there before?  
23 A No.  
24 Q That was your very first time?  
25 A Yes.

Davis - Direct 31

1 Q And who had you gone there with, if anybody?  
2 A I went by myself.  
3 Q Do you recall around what time you had gotten  
4 there?  
5 A Not really.  
6 Q Okay. Do you recall if you met anybody, or  
7 what did you do while you were at that place?  
8 A I talked to Les Johnson.  
9 Q And was he a patron or a worker there?  
10 A He was working the door.  
11 Q As a bouncer, security?  
12 A Security.  
13 Q And how long would you say you were in his  
14 company at the bar?  
15 A I was there for maybe 10 minutes.  
16 Q Did you have anything to drink at that bar?  
17 A Yes.  
18 Q What did you have?  
19 A I had a beer.  
20 Q And while you were drinking it in whose  
21 company were you were -- were you at?  
22 A With Les.  
23 Q Just Les?  
24 A Yes.  
25 Q Okay. During the course of the evening -- I

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 17

Davis - Direct 32

1 want to take your attention to maybe around the closing  
2 hours, which would put us after 2 o'clock, maybe 2:30,  
3 something like that -- do you know if there was  
4 anything that occurred inside the tavern there?  
5 A There was a fight in there.  
6 Q Did you have anything to do with that fight?  
7 A No.  
8 Q As a matter of fact, where was this fight, at  
9 what portion of the tavern?  
10 A In the front.  
11 Q And where were you staying basically the time  
12 you were there?  
13 A At the back door.  
14 Q Did you have any idea who was involved in  
15 this fight?  
16 A No.  
17 Q And once again, did you participate in this  
18 fight?  
19 A No.  
20 Q Was the place closing at around that time or  
21 did it close after that time?  
22 A It closed like right after that.  
23 Q When it was closing what did you do?  
24 A I was trying to leave. They started pushing  
25 everybody outside.

Davis - Direct 33

1 Q And what was -- Why did they start pushing?  
2 What was that a result of?  
3 A Because of the fight.  
4 Q Now, when you said you tried to leave, what  
5 door did you try to leave out of, sir?  
6 A The front door.  
7 Q And when you open that front door what --  
8 what street are you on?  
9 A I'm on Bergen Street.  
10 Q So take us to the point where I guess you  
11 come outside.  
12 A I step outside, I see some dudes in the street  
13 arguing or whatever, I look over there, I seen my man,  
14 he's arguing with this kid.  
15 Q Does he have a name, this person?  
16 A Tim.  
17 Q Timothy Phillips?  
18 A Yes.  
19 Q Is he the person who eventually got shot?  
20 A Yes.  
21 Q Did you know him?  
22 A Of course I did.  
23 Q About how long?  
24 A All of life.  
25 Q Was he a friend of yours?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 18

Davis - Direct

34

1 A Yes.

2 Q Now, I'm sorry to interrupt you, but please  
3 describe what happened.

4 A I saw them arguing and I started to leave. I got  
5 about three steps down and fell on the ground.

6 Q All right. When you say you fell on the  
7 ground what do you mean? What happened?

8 A I fell on the ground.

9 Q Anything in particular make you fall down?

10 A Yes, I was shot.

11 Q And were you still in front of the tavern at  
12 all?

13 A I was like maybe, you know, a couple of feet away  
14 from the door.

15 Q Did you hear anything prior to falling down  
16 to the ground and being shot?

17 A You know, just the regular.

18 Q What was the regular?

19 A You know, people arguing, bunch of noise -- you  
20 know, the regular.

21 Q Did you hear any gunshots?

22 A Actually no.

23 Q Let me ask you, did you expect any gunshots  
24 at that time?

25 A No.

Davis - Direct

35

1 Q Okay. So when you say you fell down to the  
2 ground what did you feel?

3 A At first I didn't feel nothing. I just looked  
4 around and that's when I realized I was shot and I  
5 crawled behind the car.

6 Q There was a car parked at the curb there?

7 A Yes.

8 Q All right. What did you do from there? What  
9 happened?

10 A There was nothing I could do, just laid there.

11 Q Well, did you then hear or see anything?

12 A Yes, I got behind the car and I looked over to see  
13 what -- you know, who was shooting and where it came  
14 from.

15 Q What did you see?

16 A I saw a dude shoot my man Tim.

17 Q Where was Tim at the time?

18 A Standing in the street.

19 Q All right. And when you say you saw him  
20 shoot can you describe briefly what this shooter looked  
21 like?

22 A Yes, skinny dude, you know, like the rest of them  
23 young kids -- skinny dude, long dreads.

24 Q All right. And was he holding anything in  
25 particular?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 19

Davis - Direct

36

1 A Yes, a gun.

2 Q All right. Do you know like what type of gun  
3 it looked like?

4 A Big black gun. I don't know exactly what it was,  
5 whatever -- big black gun.

6 Q And what was this, as you said, skinny dude  
7 with the dreadlocks, what was he doing with that gun?

8 A Shooting Tim.

9 Q All right. When he shot Tim did Tim do  
10 anything?

11 A He couldn't do nothing.

12 Q Did he fall to the ground?

13 A He was already on the ground.

14 Q When was the first time that you saw this  
15 individual with the gun?

16 A The first time I saw him?

17 Q Yes, where were you located?

18 A On the ground.

19 Q Behind the car?

20 A Yes.

21 Q All right. And you peaked over the car?

22 A Kind of around the fender.

23 Q Okay. Now, when Tim is on the ground how  
24 many times do you see this individual firing at him, if  
25 -- if you can recall, sir?

Davis - Direct

37

1 A I don't know, at least three or four times.

2 Q Did you ever get an opportunity to look at  
3 this individual in his face that was shooting at --

4 A I looked at the dude dead in the face.

5 Q I'm sorry. Say that again?

6 A Yes, I looked him dead in the face.

7 Q About how far would you say you were from him  
8 at the time?

9 A I don't know.

10 Q From -- from where you're sitting to?

11 A Maybe about here to that green chair.

12 Q Okay. And putting Tim at that green chair,  
13 as you say, Judge, for the record, if you --

14 THE COURT: Which green chair is that?

15 MR. DeMATTIA: You mean this green chair  
16 right here, sir?

17 THE WITNESS: Right there.

18 MR. DeMATTIA: Right there.

19 THE COURT: Twenty-seven feet.

20 BY MR. DeMATTIA:

21 Q Did that put Timothy Phillips and the shooter  
22 somewhere in the street vicinity?

23 A Yes.

24 Q Okay. So you say you looked at him. Did you  
25 have an opportunity to remember his face?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 20

Davis - Direct

38

1 A Yes.

2 Q Okay. What were the lighting conditions out  
3 at the time that you were able to see?

4 A It was the middle of the night. I mean, they were  
5 standing in the street, I was on the sidewalk with the  
6 curb, behind the car.

7 Q Were there any street lamps on on Bergen  
8 Street right there?

9 A Yes.

10 Q Okay. Did you have enough light to make a  
11 good visual picture of this individual?

12 A I know what I saw.

13 Q You know what you saw?

14 A Yes.

15 Q Did you have any narcotic substance or  
16 alcohol to interfere with this perception?

17 A No.

18 Q In you?

19 A No.

20 Q All right. How many beers did you have at  
21 the place?

22 A One.

23 Q Okay. Well, is there a time when this  
24 individual stopped shooting his gun at Tim, the victim?

25 A Yes, when he got ready to run.

Davis - Direct

39

1 Q Okay. Well, describe what he did from that  
2 point on, sir? You said he ran.

3 A He stopped shooting, looked at me, took off and  
4 ran.

5 Q Okay. Which direction did he run in?

6 A Towards what's that, Scheerer Avenue, one of them  
7 blocks. He looked at me and ran that way.

8 Q Okay. When he was running was he carrying  
9 anything?

10 A The gun.

11 Q Did you see where he ran off to?

12 A No.

13 Q Okay. There came a time when you lost sight  
14 of him at that point?

15 A Yes. I was behind the car.

16 Q Okay. Now, what happened to your leg? Can  
17 you describe for us what happened to your leg?

18 A I got shot.

19 Q Okay. Anything broken inside your leg?

20 A Shattered.

21 Q What was shattered, if you recall?

22 A My tendon.

23 Q Okay. I want to show you what's been marked  
24 S-25 for identification. I want you to take a look at  
25 S-25 for identification, sir, and see if you could

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 21

Davis - Direct 40

1 recognize what that photograph is?  
2 A It's my leg.  
3 Q And the condition of your leg is shot?  
4 A Yes.  
5 Q Did you experience any pain?  
6 A Severely.  
7 Q Where were you taken, if anywhere, from in  
8 front of the bar? Did you go anywhere?  
9 A University Hospital.  
10 Q How did you get there?  
11 A Ambulance.  
12 Q When you got to University Hospital did you  
13 receive any treatment?  
14 A Yes, I had surgery.  
15 Q All right. Because we weren't there, sir.  
16 A Yes, I had surgery.  
17 Q You had surgery? Immediately?  
18 A I believe so.  
19 Q And the surgery was for what purpose?  
20 A They had to put rods in my leg.  
21 Q Did you have an extended stay in the  
22 hospital?  
23 A I guess you could say that, yes.  
24 Q Okay. Do you recall exactly how many days  
25 you were in there? If you don't, fine, but just if you

Davis - Direct 41

1 recall.  
2 A I think I got out like March.  
3 Q Okay. Were there any complications due to  
4 the wound that you received?  
5 A Yes.  
6 Q Like what?  
7 A My leg is -- it's infected.  
8 Q At the present time.  
9 A Yes.  
10 Q It's infected?  
11 A Yes.  
12 Q Okay. Is there anything scheduled for  
13 further treatment at the present time for your leg?  
14 A I was supposed to have surgery on the 18th.  
15 Q 18th of this month?  
16 A Yes.  
17 Q And why didn't you have surgery?  
18 A Because I had to come here.  
19 Q Okay. When you go back what's going to  
20 happen?  
21 A I'm going to have surgery.  
22 Q That shooting was obviously, simple  
23 mathematics, four years ago, or close to it, but you're  
24 still experiencing symptoms from that gunshot wound?  
25 A Yes.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 22

Davis - Direct

42

1 Q That individual that you saw do the shooting,  
2 had you ever seen him before in your life?

3 A No, I don't know that kid.

4 Q Well, did there come a time when the police  
5 officers attempted -- police officers, whether they  
6 were from my office, investigators, or detectives from  
7 Newark Police, did in fact talk to you in order to take  
8 a statement?

9 A Sure, when I was in the hospital.

10 Q And you were still in the hospital. The date  
11 of December 21st, 2001?

12 A Yes.

13 Q Which would be approximately five days after  
14 this incident you cooperated with these individuals?

15 A Yes, I answered the questions.

16 Q All right. And did they formalize it in a  
17 statement?

18 A Yes.

19 Q And you reviewed that statement and you  
20 signed the statement?

21 A Yes.

22 Q Okay. Did one of the detectives show you a  
23 photographic display?

24 A They showed me a bunch of pictures.

25 Q Okay. And to see if you recognized anyone in

Davis - Direct

43

1 that photograph array?

2 A Yes.

3 MR. DeMATTIA: Your Honor, an envelope  
4 previously marked S-21 for identification and its  
5 contents, which are six photographs.

6 BY MR. DeMATTIA:

7 Q An envelope has been marked S-21 containing  
8 six photographs, sir. I'd like to turn them over for  
9 you, if I can. No. 1, No. 2 -- if I could go all  
10 through them -- No. 3, No. 4, No. 5 and No. 6. And  
11 during the course -- Well, while you were at that  
12 hospital on that date do you recall being shown six  
13 photographs?

14 A Yes.

15 Q And were you asked to see if you recognized  
16 anyone in these photographs?

17 A Yes.

18 Q Did you, in fact, recognize at least one of  
19 the photographs?

20 A I recognized two of them.

21 Q All right. Let's start with the first one,  
22 photograph marked No. 3 in this array, did you  
23 recognize that photograph?

24 A Yes.

25 Q And that is a photograph of which individual?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 23

Davis - Direct 44

1 A That's the dude I saw outside of the bar.  
2 Q Doing what?  
3 A With the gun.  
4 Q Doing the shooting?  
5 A That's the dude I saw with the gun.  
6 Q Okay. Did you do anything in the back of  
7 that particular photograph?  
8 A I signed it.  
9 Q Is that your name Stacy Davis?  
10 A Yes, it is.  
11 Q And the date is December 21st of 2001.  
12 A Yes.  
13 Q Do you see that person in court today?  
14 A No.  
15 Q Does that picture look different than the  
16 individual in court today?  
17 A That can't be him right there.  
18 Q I'm sorry?  
19 A That can't be him right there.  
20 Q And why couldn't it be him?  
21 A Look at him.  
22 Q Does it look different?  
23 A That can't be him right there.  
24 Q That doesn't look like the same individual?  
25 A No, not at all.

Davis - Direct 45

1 Q Is there anything different about him?  
2 A Yes, he don't look, you know --  
3 Q Well, what's different?  
4 A -- crazy with the dirty dreads and all that.  
5 Q He doesn't have the dreads? What else is  
6 different?  
7 A He just -- He don't look the same.  
8 Q He don't look the same?  
9 A No.  
10 Q Did you ever know the name of this  
11 individual?  
12 A Well, I don't know the kid.  
13 Q You never had seen him before. Did he have a  
14 beard, like the individual in court today?  
15 A No.  
16 Q Did he have close-cropped hair, like the  
17 individual in court today?  
18 A No.  
19 Q Take a look at the face in this photograph.  
20 Are you taking a look at the face in the photograph?  
21 A (No verbal response)  
22 Q Take a look at the face of that individual.  
23 A They don't look the same.  
24 Q You don't think they look the same?  
25 A No.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 24

Davis - Direct

46

1 Q Okay. But definitely the hair is different,  
2 the beard is different?

3 A Yes.

4 Q And you did not know the name.

5 A No, I did not know the kid.

6 Q But this is the individual that you saw  
7 outside the bar.

8 A Yes.

9 Q Okay. With regard to you said a second  
10 photograph, Photograph No. 4, do you see a signature on  
11 the back of that?

12 A Yes.

13 Q And whose signature is that?

14 A Mine.

15 Q What date?

16 A 12-21-01.

17 Q I'm turning it over. You picked out that  
18 photograph, also.

19 A Yes.

20 Q Why did you pick out that photograph?

21 A Because I saw him out there.

22 Q You saw him out there that night?

23 A Yes.

24 Q So it just so happens that this photograph  
25 was in there, too.

Davis - Direct / Sidebar

47

1 A Right.

2 Q You didn't plan it that way, did you?

3 A No.

4 Q Okay. And you didn't recognize any of the  
5 other photographs.

6 A No.

7 Q Now, on May 9th did you appear before an  
8 Essex County Grand Jury -- of 2003, sir?

9 A Yes.

10 MR. GORDON: I'm going to object at this  
11 point, Your Honor.

12 THE WITNESS: I believe so, yes.

13 THE COURT: Hang on.

14 MR. GORDON: Ask to be heard at sidebar.  
15 (Sidebar)

16 MR. GORDON: Judge, I object if the witness  
17 is going to be asked about that he appeared later at  
18 the Essex County Grand Jury. It's not relevant, it's  
19 not impeachment. The prosecutor is not impeaching his  
20 own witness. There's no implied charge of recent  
21 fabrication such that he has to bully the witness with  
22 extrinsic evidence of some later statement. In fact,  
23 we know that at the grand jury what occurred was that  
24 Mr. Davis did what he did on December 21st, he  
25 acknowledged that he signed the back of the photo, the

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 25

Sidebar

48

1 same photo that he's been presented with at court. I  
2 don't know why now it would be proper on direct to ask  
3 him about his testimony in front of the Essex County  
4 Grand Jury.

5 MR. DeMATTIA: Well, he hasn't made an in-  
6 court identification. Of course, he's been unable to  
7 identify him because of the change in appearance. I  
8 think I'm entitled to show once again on as many pages  
9 as possible that he identified this picture and went  
10 over it, what he said about it, because this is not a  
11 dive, because he's being truthful as to the change of  
12 appearance, but I believe I should be afforded an  
13 opportunity to reinforce his identification not only at  
14 the time he made it with the police officers, but at  
15 the time he reaffirmed it in front of the grand jury.  
16 What's improper about that?

17 MR. GORDON: Judge, at this point to say that  
18 he reaffirmed the testimony when he's already indicated  
19 very clearly that he signed the photograph, and so that  
20 evidence is going to come before this jury. Why now  
21 would it be appropriate to buttress his testimony with  
22 extrinsic evidence or something else? That's like  
23 saying let's pull out the statement and go over that  
24 with him, too.

25 THE COURT: Well, that's like saying that why

Sidebar

49

1 should we let a police identification procedure be  
2 admitted when a -- when a witness can identify somebody  
3 in the courtroom? Well, the answer is you can because  
4 every time there's -- especially when identification is  
5 an issue, every time that a witness is able to  
6 identify, or in the past has indicated they were able  
7 to identify the individual as a -- as a -- as the  
8 perpetrator, it was an appropriate inquiry.

9 MR. GORDON: Well, Judge, are we going to go  
10 in and ask him what his testimony was, or are we just  
11 going to ask him if on one occasion did he testify  
12 before the grand jury under oath and was he shown that  
13 photograph and did he identify that photograph then?  
14 If that's the limit then I think the question should be  
15 -- the question should be tailored for that or  
16 rephrased at this point, however, but I don't think we  
17 should just let him talk about all of the testimony  
18 that he gave at the grand jury. As long as it's  
19 tailored then my objection would be withdrawn if the  
20 question was tailored. I don't think you can just go  
21 into the details of his testimony.

22 MR. DeMATTIA: Well, I intend to go into the  
23 details of his testimony, Your Honor. I have to prove  
24 the case. I have the burden of proving the case.

25 THE COURT: Well, but it is hearsay.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 26

Sidebar

50

MR. DeMATTIA: The declarant's here in court before you.

THE COURT: That doesn't make it any less hearsay.

MR. DeMATTIA: I'm completely at a loss.

MR. GORDON: It's not -- I'm sorry.

THE COURT: Any out-of-court statement offered for the proof of the matter asserted is hearsay, whether or not the declarant is on the stand or not. Now, because it's the out-of-court statement that you're offering, not the in-court statement, so unless there's an exception like this was a prior identification of the -- of the -- of the perpetrator at another occasion, which I will allow. I'm working in a vacuum now but there's got to be some exception to the hearsay rule.

MR. DeMATTIA: Well, one of the exceptions is also in his statement he said that he did not see the shooting and in front of the grand jury he did say that he saw the shooting, in addition to him standing over the body. I'm going to explore that and ask him why he said additional information at the grand jury.

THE COURT: All right. I'll allow that. That -- that has the effect of -- of -- It gets a little confusing there in terms of what is impeachment

Sidebar

51

versus what is --

MR. DeMATTIA: Is it proper? Can I go into that?

THE COURT: I think it's proper because it helps to -- helps the jury understand. But I mean the danger there is that they might not know what the hell to believe. That's probably what the defense is hoping for, so --

MR. GORDON: But, Judge, if I may, isn't that -- that's part of really what the basis of the objection has been. It's not just that all this grand jury testimony is now admissible. If the prosecutor can show a prior -- another identification which occurred subsequent to the initial identification but prior to an in-court identification -- I'm assuming that's what the prosecutor is saying he wants to do, but he wants to do it --

THE COURT: Well, he's also saying, I gather, that he's surprised by the fact that the witness is saying now that he didn't see the shooting, or implied that he didn't see the shooting, when he had said so previously. Under the circumstances he's allowed to do that.

MR. GORDON: But two things. No. 1, he just testified that he did see the shooting. And No. 2, I'm

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 27

Sidebar

52

1 not sure where in the statement there's anything that  
2 says he did not see the shooting. He wasn't asked  
3 questions specific about it to the degree that he was  
4 in front of the grand jury, but he never said in his  
5 sworn statement that he did not see him shoot him. I  
6 think The Court would have to review that statement  
7 first.

8 THE COURT: Okay. Well, it would have to be  
9 something inconsistent.

10 MR. DeMATTIA: Okay.

11 MR. GORDON: Well, that's my point. And so  
12 what I'm asserting now is that the grand jury testimony  
13 is not inconsistent. This is Mr. DeMattia's witness.  
14 I think he's trying to say now he's surprised because  
15 there has been no in-court I.D., but it's not --

16 MR. DeMATTIA: I'm not surprised because of  
17 no in-court I.D., Your Honor. There's no --

18 THE COURT: You're now trying to explain why  
19 there was no in-court I.D. and I'm going to allow that.

20 MR. GORDON: But my point is how does  
21 anything that happened at the grand jury explain that?  
22 There's nothing in the grand jury testimony that's  
23 going to explain that.

24 THE COURT: I don't know. I wasn't there.

25 MR. GORDON: My point is there's not an

Sidebar

53

1 inconsistency between the sworn statement and the grand  
2 jury testimony. There's nothing in the sworn statement  
3 that said that he --

4 THE COURT: That's not what is at issue. Is  
5 there anything inconsistent between the testimony here  
6 and what's in the grand jury?

7 MR. GORDON: I don't think so, because all  
8 that happened in front of the grand jury was that the  
9 witness identified the photograph, said this was the  
10 person I saw doing the shooting, said he saw the  
11 shooting, and that's exactly what he testified to here.

12 MR. DeMATTIA: Well, that's what I would like  
13 to get out at a minimum, Judge.

14 THE COURT: Okay.

15 MR. GORDON: But I think that's my point,  
16 Judge. If the witness has been inconsistent is my  
17 point. There's no inconsistency. If there were an  
18 inconsistency I can understand how the prosecutor now  
19 would want to point out to the jury that on a previous  
20 occasion there had been something different, but that's  
21 not what happened here.

22 THE COURT: I think the fact that the  
23 defendant changed his appearance is what -- what  
24 created a difference and created a relevance for that  
25 additional testimony, to explain that even if it was

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 28

Sidebar / Davis - Direct

54

1 consistent it's still admissible on the issue of  
2 identity, and I think that that is relevant.

3 MR. GORDON: But didn't we just hear that  
4 information? In other words, the prosecutor just asked  
5 this witness several questions saying, well, does the  
6 witness in court appear to look different and the  
7 witness said yes. So, how is it that bringing in an  
8 identification that occurred of the photograph that the  
9 witness has just identified in court, that  
10 identification at grand jury, how does that even touch  
11 upon the issue of whether the defendant looks different  
12 today? He came here and he said that this person looks  
13 different.

14 THE COURT: Just on the issue of whether or  
15 not your client did the crime.

16 MR. GORDON: Right.

17 THE COURT: That identification and then  
18 magnification is an exception.

19 MR. DeMATTIA: Let's go.

20 (Sidebar concluded)

21 THE COURT: All right. The objection is  
22 overruled. Mr. DeMattia, please continue.

23 MR. DeMATTIA: Thank you, Your Honor.

24 BY MR. DAVIS:

25 Q Mr. Davis, I was asking you, do you recall on

Davis - Direct

55

1 May 9th of 2003 you were before an Essex County Grand  
2 Jury testifying about the events of today?

3 A Yes, I do.

4 Q As a matter of fact, we had a pre-trial  
5 conference where I met with you at the place you're at  
6 now where we discussed your statement and the grand  
7 jury testimony, correct?

8 A Yes.

9 Q Okay. During the grand jury testimony do you  
10 recall that I was the assistant prosecutor there?

11 A Yes.

12 Q If you recall. If you don't --

13 A Yes.

14 Q Okay. And during the course of the  
15 proceeding at the grand jury I had shown you a  
16 photograph, as a matter of fact, or asked you if you  
17 would be able to identify the photograph of the person  
18 you saw outside the bar that evening, correct?

19 A Yes.

20 Q Were you able to do that for the Essex County  
21 Grand Jury at that time?

22 A Yes, I was.

23 Q Yes, and it was the same photograph that I  
24 showed you before, was it not, with the distinctive  
25 features of that particular individual at that time.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 29

Davis - Direct

56

1 A Right.

2 Q Same photograph. And you did agree, did you  
3 not, in front of the grand jury that that was the  
4 individual?

5 A Right.

6 Q Once again, the individual in court today  
7 does not look anything like that picture to you?

8 A Not at all.

9 Q Okay. Did you see anyone else outside that  
10 tavern that evening with a handgun? You have to answer  
11 for the --

12 A No, no.

13 Q Okay. Mr. Davis, presently where are you  
14 staying?

15 A In prison.

16 Q At Northern State Prison?

17 A Yes.

18 Q And as a result of some charges that were  
19 against you you hired yourself an attorney?

20 A Yes.

21 Q Who was that attorney?

22 A Tom Ashley.

23 Q As a matter of fact, Mr. Davis, there has  
24 been instances before in your past dating back to 1994  
25 when you were involved with the criminal justice

Davis - Direct

57

1 system?

2 A Yes.

3 Q With regard to May 6th of 1994 there was a  
4 time when you were convicted of the unlawful possession  
5 of a weapon where you received probation for five years  
6 with the service of 180 days in the Essex County Jail?

7 A Yes.

8 Q Do you recall that? That was back in May of  
9 1994 out of this courthouse, the Essex County  
10 Courthouse?

11 A Yes.

12 Q With regard to the Union County Courthouse a  
13 year later, back in December of 1995, you were  
14 convicted, or had pled guilty, actually, to a robbery  
15 where you were sentenced to 15 years, five of which you  
16 would be ineligible for parole.

17 A Yes.

18 Q And did you hire an attorney for that?

19 A Of course.

20 Q In 1996 there was possession of a controlled  
21 dangerous substance out of the Essex County Court --  
22 this court system again -- where you had pled guilty  
23 and you received three years?

24 A Yes.

25 Q And that three years, and even the first

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 30

Davis - Direct 58

1 conviction of robbery ran concurrent, you served at the  
2 same time?  
3 A Right.  
4 Q And finally in the most recent one, which had  
5 you incarcerated at Northern State Prison, the  
6 Department of Corrections, these are the charges that  
7 you hired Mr. Thomas Ashley for?  
8 A Yes.  
9 Q Okay. And they were indictments where you  
10 pled guilty for a plea that Mr. Ashley was able to get  
11 you?  
12 A Yes.  
13 Q With regard to one indictment you had pled  
14 guilty to possession of a CDS with the intent to  
15 distribute within 1,000 feet of a school and possession  
16 of CDS, where you were sentenced on June 18th of 2004  
17 to four years, 18 months?  
18 A Yes.  
19 Q That's the sentence you're presently doing?  
20 A Yes.  
21 Q And, also, another indictment was taken care  
22 of by Mr. Ashley at that same time?  
23 A Yes.  
24 Q A second indictment charging you with another  
25 count of possession of CDS with the intent to

Davis - Direct 59

1 distribute within 1,000 feet of a school, that also was  
2 four years, 18 months? So both these indictments you  
3 pled guilty to through a plea bargain?  
4 A Yes.  
5 Q Who arranged that plea bargain for you?  
6 A Tom Ashley.  
7 Q Okay. That was on June -- June 18th of 2004.  
8 Now, was there any deal made between the State of New  
9 Jersey and Mr. Ashley for your testimony or your  
10 cooperation?  
11 A With this?  
12 Q Yes.  
13 A No.  
14 Q Okay.  
15 A Not at all.  
16 Q Not at all.  
17 A No.  
18 Q You're familiar with the process. We would  
19 have had to disclose that to you, if it was.  
20 A Yes.  
21 Q Correct?  
22 A Yes, you would have. You would have had to come  
23 with a lot better deal than that.  
24 Q Right, and we didn't offer you anything.  
25 A No.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 31

Davis - Direct

60

1 Q As a matter of fact, when this incident  
2 occurred on December 16th of 2001 and you had given the  
3 statement of December 21st of 2001 and made the  
4 identification, were there any charges that we made a  
5 deal with you about?

6 A No.

7 Q You -- you hadn't even been arrested --

8 A No.

9 Q -- on these charges that Mr. Ashley took care  
10 of.

11 A No.

12 Q Right? You didn't get arrested yet on those.  
13 And then even in May of 2003, when you testified in  
14 front of the grand jury, was -- were you arrested on  
15 these charges?

16 A No.

17 Q Okay. So was any deal made with you back on  
18 May 9th of 2003 to testify in front of the grand jury?

19 A No.

20 Q And -- and, once again, to get you here today  
21 why are you testifying today, any deal that we gave  
22 you?

23 A No.

24 Q Were you the victim of a crime?

25 A Yes, somebody shot me.

Davis - Direct / Sidebar

61

1 Q Is that why you're testifying?

2 A Yes.

3 MR. DeMATTIA: I have no further questions,  
4 Judge.

5 THE COURT: Cross-examine.

6 MR. GORDON: Your Honor, in light of the time  
7 would you like to break now or --

8 THE COURT: Why don't you step up to sidebar  
9 for a minute.

10 (Sidebar)

11 THE COURT: How much time do you think you  
12 need?

13 MR. GORDON: I'm not sure.

14 THE COURT: More than a half an hour? Maybe  
15 we could be done with him and save the officers the  
16 time to, you know, bringing him down, bringing him up,  
17 and all that stuff. But if it was going to go an hour  
18 then I wouldn't --

19 MR. GORDON: Just not sure, Judge. I don't  
20 want to inconvenience anyone, but it's up to you. I  
21 just wanted to give you that opportunity.

22 THE COURT: I say we continue.

23 MR. DeMATTIA: As long as no one has any type  
24 of medical disability where they've got to eat lunch or  
25 anything like that. That's all, Judge.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 32

Sidebar / Davis - Cross

62

1 THE COURT: Well, hopefully they'll tell me  
2 that. Okay. We'll continue.

3 MR. GORDON: Thank you, Judge.

4 (Sidebar concluded)

5 THE COURT: We'll have our lunch -- unless  
6 somebody has a particular problem, they should tell me  
7 about that right now -- we're going to continue with  
8 this witness in the hopes that we can complete him  
9 before breaking for lunch, which we'll still have the  
10 same full hour, it just will not be from 12:30 to 1:30.  
11 Okay? Mr. Gordon, cross-examination.

12 MR. GORDON: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MR. GORDON:

14 Q You were shown a photo of a gunshot wound to  
15 your leg, right?

16 A Yes.

17 Q And you were taken by ambulance to the  
18 hospital, right?

19 A Yes.

20 Q And you said that was a severe wound that you  
21 suffered, right?

22 A Yes.

23 Q It was very severe. The bones in your legs  
24 were shattered, right? A bone in your leg was  
25 shattered, right?

Davis - Cross

63

1 A Yes.

2 Q And, in fact, you needed surgery to repair  
3 the wound at that time, right?

4 A Yes.

5 Q By the way, when you went to the hospital did  
6 any police speak to you at the hospital?

7 A Yes.

8 Q Can you recall the name of any police that  
9 spoke to you?

10 A Only one of them.

11 Q A plain clothes detective?

12 A I suppose.

13 Q At that time did he mention to you anything  
14 about placing you under arrest?

15 A No.

16 Q At any time did anybody mention placing you  
17 under arrest for any outstanding warrants?

18 A No, they didn't.

19 Q When you were in the hospital you said you  
20 stated a period of how long, a few months?

21 A Yes.

22 Q Got out in March?

23 A I believe so.

24 Q Now, after the shooting you were down on the  
25 ground, right?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 33

Davis - Cross

64

1 A Yes.

2 Q You were approximately this far away from the  
3 shooter, right?

4 A About.

5 Q You said you were peeking around the fender  
6 of a car, right?

7 A True.

8 Q True. And were you -- at that point were you  
9 on your knees, were you on your back, were you --

10 A I was on my side.

11 Q Side? Right side or left side?

12 A My right side.

13 Q And the car that you were peeking around, was  
14 that car parked near the front of the bar?

15 A Yes, it was.

16 Q Was it directly in front of the front door,  
17 or was it to the side?

18 A It wasn't. It was to the side.

19 Q Was it more down the street to the bus stop?

20 A Right about there.

21 Q Right about where the bus stop was?

22 A Yes.

23 Q And that's on Bergen Street, right?

24 A Yes.

25 Q And so you were peeking around the back

Davis - Cross

65

1 bumper or the front bumper?

2 A Back bumper.

3 Q And you indicated that the person you saw  
4 with the gun was young, right?

5 A Yes.

6 Q And, in fact, I think you said skinny dude,  
7 like the rest of them young kids, right?

8 A Yes.

9 Q There were some -- some other kids that night  
10 that had that look, right, that dreads look?

11 A Absolutely.

12 Q That skinny look, right? True?

13 A Absolutely.

14 Q Some of them were at the bar inside and some  
15 of them were outside the bar, right?

16 A Yes.

17 Q And at the moment that you realized you were  
18 shot did you feel any pain then? Did you feel some  
19 pain then?

20 A Yes.

21 Q And you said it was middle of the night,  
22 right?

23 A Yes.

24 Q It was in front of the bar but it was  
25 somewhat dark, right?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 34

Davis - Cross / Redirect

66

1 A Yes.

2 Q And when you saw that person holding a gun  
3 did you look at the gun?

4 A Yes.

5 Q And let's be frank, Mr. Davis, you've been  
6 around a little bit. You took a good look at that gun,  
7 didn't you?

8 A Of course I did.

9 Q Of course you did because you didn't want  
10 that gun to turn and face you again, right?

11 A No, I didn't.

12 Q Of course you didn't. And in fact that's  
13 what you were looking at, wasn't it? You were looking  
14 at the gun to make sure that it didn't turn its way  
15 toward you, isn't that fair to tell the jury?

16 A Yes, I suppose.

17 MR. GORDON: Thank you. I have nothing  
18 further, Your Honor.

19 THE COURT: Any redirect?

20 MR. DeMATTIA: Yes, Your Honor.

21 REDIRECT EXAMINATION BY MR. DeMATTIA:

22 Q Mr. Davis, after you looked at the gun did  
23 you look up and look at the individual's face?

24 A Sure I did.

25 Q Is that why you were able at that time to

Davis - Redirect / Colloquy

67

1 identify a photograph of that person?

2 A Sure it was.

3 Q And you were sure that that person you  
4 identified in that photograph was the same person out  
5 there that night?

6 A Yes.

7 MR. DeMATTIA: Nothing further, Judge.

8 THE COURT: Anything, Mr. Gordon?

9 MR. GORDON: I'm done with him, Your Honor.

10 THE COURT: Thank you very much, Mr. Davis.  
11 You're excused.

12 All right. It's only 12:35, so we weren't  
13 delayed too much from our lunch. We're going to break  
14 for an hour for lunch. Remember don't discuss the  
15 case, not even with each other, and obviously not with  
16 anyone else. Anyone attempts to contact you don't  
17 report that to your fellow jurors, make sure you report  
18 it to me or my staff immediately. Enjoy your lunch and  
19 we'll see you back here at 1:35. Thank you very much.

20 (Luncheon recess)

21 THE COURT: Okay. Ladies and gentlemen,  
22 we're ready to continue from where we left off. The  
23 State, Mr. DeMattia, will call its next witness.

24 MR. DeMATTIA: Stanley Rosa.

25 THE COURT: Stanley Rosa to the stand,

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 35

Rosa - Direct

68

1 please.

2 COURT OFFICER: Raise your right hand.

3 S T A N L E Y R O S A, STATE'S WITNESS, SWORN

4 COURT OFFICER: State your full name for the  
5 record.

6 THE WITNESS: Stanley Rosa, R-o-s-a.

7 THE COURT: Good afternoon, sir.

8 THE WITNESS: Good afternoon.

9 THE COURT: Mr. DeMattia?

10 DIRECT EXAMINATION BY MR. DeMATTIA:

11 Q Sir, by whom are you employed?

12 A Essex County Prosecutor's Office.

13 Q In what capacity?

14 A I'm an Investigator in the Homicide Squad.

15 Q For how long?

16 A I've been working there for four years.

17 Q Prior to that assignment?

18 A I worked in Maplewood for 15 years.

19 Q As a?

20 A As a detective, a patrolman, and anti-crime.

21 Q What are some of your responsibilities with  
22 regard to your position in the Homicide Squad of my  
23 office?

24 A To investigate homicides, suspicious shootings and  
25 police shootings.

Rosa - Direct

69

1 Q As part of your duties is it also fair to say  
2 that you attempt to make identifications through  
3 photograph arrays?

4 A Yes.

5 Q Did you have occasion to work with  
6 Investigator Benjamin Powell of our office with regard  
7 to a shooting that occurred on December 16th, 2001 at  
8 Toby's Lounge, 966 Bergen Street, City of Newark?

9 A Yes.

10 Q Did you accompany him anywhere on December  
11 21st, 2001?

12 A To University Hospital, Newark.

13 Q Is there anybody in particular that you saw  
14 at University Hospital?

15 A I saw Mr. Stacy Davis.

16 Q And while you were at that hospital location  
17 with Stacy Davis did you bring with you photographs?

18 A Yes.

19 Q I want to show you an envelope which has  
20 previously been marked S-21 for identification,  
21 containing six photographs, which one also has another  
22 identification mark. The reason of your visit to Mr.  
23 Stacy Davis at University Hospital?

24 A Was to show him this photo display, to identify  
25 anyone that was involved in the shooting.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 36

Rosa - Direct

70

1 Q If he could.  
2 A If he could, yes.  
3 Q What was his condition at the time, if you  
4 recall?  
5 A I believe he was in pain. He had just been shot.  
6 Q Did you present the photographic display to  
7 him?  
8 A Yes, I did.  
9 Q How did you present it?  
10 A I read him a preamble that comes with the form and  
11 then I showed him the photos one at a time.  
12 Q We'll get to the preamble in a minute. When  
13 you showed him the photographs one at a time did  
14 anything occur during that presentation?  
15 A Yes, he saw one photo which he identified as the  
16 individual that shot him in the case that Investigator  
17 Powell was investigating.  
18 Q All right. What photograph was that?  
19 A Photograph No. 3.  
20 Q And on the back of it what was he told to do  
21 to that photograph?  
22 A He was told to sign his name and date it.  
23 Q Did you witness his signature?  
24 A Yes, I did.  
25 Q And what was the date?

Rosa - Direct

71

1 A The date on it is December 21st, 2001.  
2 Q Are you aware of the name of the individual  
3 depicted in Photograph No. 3?  
4 A I just -- Miller.  
5 Q Last name Miller?  
6 A Yes. Naeem Miller.  
7 Q Thank you. And that was the name of the  
8 individual in Photograph No. 3 that Mr. Davis picked  
9 out?  
10 A Yes, it was.  
11 Q As being involved in the shooting at that  
12 location on December 16th, 2001?  
13 A That's correct.  
14 Q Do you see Mr. Miller in court today?  
15 A Yes, he's sitting at the table right there. He  
16 looks a little different from the photograph, but  
17 that's the individual.  
18 Q In what way does he look different?  
19 A His hair style and the facial hair.  
20 Q Are different than?  
21 A From the photograph that was shown to Mr. Davis.  
22 Q Now, I want to show you what's been marked S-  
23 26 for identification. I don't know if Mr. Gordon has  
24 seen this before. This is an exhibit provided in  
25 discovery.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 37

Rosa - Direct

72

1 MR. GORDON: Yes, thank you.

2 BY MR. DeMATTIA:

3 Q When you talk about preamble of certain

4 instructions, can you look at a three-page exhibit, S-

5 26 for identification? Do you recognize that?

6 A Yes, I do.

7 Q What is the first page?

8 A It's a photo display instructions.

9 Q You instructed Mr. Davis as to how to

10 proceed?

11 A Yes, I did.

12 Q You signed off on that page?

13 A Yes, I did.

14 Q What is the second page?

15 A It's a photo display report.

16 Q And at the bottom of the second page is there

17 an area for comment about demeanor of the witness?

18 A Yes.

19 Q Did you yourself write something there?

20 A Yes.

21 Q What did you say?

22 A It says the individual showed signs of anger and

23 deep emotion after identifying Photograph No. 3. He

24 was crying and showing display of disgust.

25 Q That was your notation?

Rosa - Direct

73

1 A Yes.

2 Q And you signed that off?

3 A Yes, I did.

4 Q And who was that describing?

5 A That was describing Mr. Miller.

6 Q All right. And the final page is Mr. Davis's

7 what?

8 A His statement as to what he did when he saw the

9 photos.

10 Q And it was Photograph No. 3 that he picked

11 out?

12 A Yes.

13 Q Did you confer with Investigator Ben Powell

14 after that, after it was shown?

15 A Yes.

16 Q Was Investigator Powell there?

17 A No, he was not.

18 Q But did he accompany you to --

19 A Yes, he accompanied me to the hospital, but he

20 wasn't present when I showed this display to --

21 Q Did you know anything about this case before

22 and during the presentation of the photographs to Mr.

23 Stacy Davis?

24 A No, I did not.

25 Q And why is that?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
 973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 38

Rosa - Direct 74

1 A We're not supposed to -- Anyone that's showing a  
2 photo display is not supposed to have any knowledge of  
3 the case. It's supposed to be an independent person.  
4 Q For what reason?  
5 A Just not to show any I guess favoritism or  
6 anything to help along with the case, just be an  
7 independent witness.  
8 MR. DeMATTIA: I have no further questions of  
9 Investigator Rosa.  
10 THE COURT: Cross-examine?  
11 MR. GORDON: Thank you, Judge. No questions  
12 of the witness.  
13 THE COURT: Thank you, Investigator Rosa.  
14 You're excused. Mr. DeMattia?  
15 MR. DeMATTIA: Kyle Kemp.  
16 THE COURT: Kyle Kemp to the stand, please.  
17 COURT OFFICER: Raise your right hand.  
18 K Y L E K E M P, STATE'S WITNESS, SWORN  
19 COURT OFFICER: State your full name for the  
20 record.  
21 THE WITNESS: Kyle R. Kemp.  
22 THE COURT: Please be seated. Good  
23 afternoon.  
24 THE WITNESS: Good afternoon, sir.  
25 THE COURT: Mr. DeMattia?

Kemp - Direct 75

1 DIRECT EXAMINATION BY MR. DeMATTIA:  
2 Q Sir, by whom are you employed?  
3 A Scranton Police Department.  
4 Q In what capacity?  
5 A As a police officer.  
6 Q For how long?  
7 A Three years. Approximately three years with  
8 Scranton.  
9 Q I want to take your attention back to May 8th  
10 of 2004. Did you come into contact with a person by  
11 the name of Naeem Miller?  
12 A Yes.  
13 Q When you came into contact with that person  
14 by the name of Naeem Miller did he use the name Naeem  
15 Miller?  
16 A No, he did not.  
17 Q What name did he use?  
18 A Steven Wheeler.  
19 Q Do you see the person who used the name  
20 Steven -- what did you say, Wheeler?  
21 A Wheeler.  
22 Q -- in court today?  
23 A Yes, I do.  
24 Q Can you please point to him and describe what  
25 he's wearing?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 39

Kemp - Direct / Charles - Direct 76

1 A He's sitting right there with a white striped  
 2 shirt on with a goatee. He looks a little bit  
 3 different than he does when I --  
 4 THE COURT: Indicating the defendant.  
 5 BY MR. DeMATTIA:  
 6 Q You stole my next question. Does he look  
 7 like he was back on May 8th of 2004 today?  
 8 A No, he has changed his appearance today.  
 9 MR. DeMATTIA: No further questions.  
 10 THE COURT: Cross-examine?  
 11 MR. GORDON: Your Honor, nothing of this  
 12 witness.  
 13 THE COURT: Thank you very much, Officer.  
 14 You're excused.  
 15 MR. DeMATTIA: Tim Charles, Your Honor.  
 16 THE COURT: Tim Charles to the stand, please.  
 17 COURT OFFICER: Raise your right hand.  
 18 T I M O T H Y C H A R L E S, STATE'S WITNESS, SWORN  
 19 COURT OFFICER: State your full name for the  
 20 record.  
 21 THE WITNESS: Timothy Charles.  
 22 THE COURT: Please be seated, sir. Good  
 23 afternoon. Mr. DeMattia?  
 24 DIRECT EXAMINATION BY MR. DeMATTIA:  
 25 Q Sir, by whom are you employed?

Charles - Direct 77

1 A Scranton Police.  
 2 Q In what capacity?  
 3 A I'm a police officer.  
 4 Q For how long?  
 5 A I've been a police officer for three years.  
 6 Q Officer Charles, on May 8th, 2004 did you  
 7 come into contact with a Naeem Miller in the City of  
 8 Scranton, Pennsylvania?  
 9 A Yes, I did.  
 10 Q When you came into contact with him did he  
 11 use the name Naeem Miller?  
 12 A He did not.  
 13 Q On the first occasion what name did he use?  
 14 A Steven Cruz.  
 15 Q And how did he spell that?  
 16 A The last name is spelled C-r-u-z-z.  
 17 Q Did you approach him and come into contact  
 18 with him on a second occasion?  
 19 A Yes.  
 20 Q And did he use -- What name did he use at  
 21 that time?  
 22 A Steven Cruz again. He spelled the last name  
 23 differently the second time. He spelled it with one  
 24 "z" instead of two.  
 25 Q Okay. And when you came in contact with him

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
 973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 40

Charles - Direct

78

1 did you have an opportunity to take a photograph of  
2 him?

3 A Yes, I did.

4 Q S-27 for identification. I want to show you  
5 what's been marked S-27 for identification. Do you  
6 recognize that?

7 A Yes.

8 Q What is that?

9 A It's a picture of Naeem Miller.

10 Q And that you took personally on May 8th of  
11 2004?

12 A Yes.

13 Q Did there come a time when you were talking  
14 to him that you asked him again what his name was?

15 A Yes.

16 Q And what name did he give you finally at that  
17 time?

18 A At that point he gave me Naeem Miller.

19 Q And do you see the person that had given you  
20 Steven Cruz one spelling, and then Steven Cruz a second  
21 spelling, and finally Naeem Miller today in the  
22 courtroom?

23 A Yes, I do.

24 Q Can you please point to him and describe what  
25 he's wearing?

Charles - Direct

79

1 A He's over there in a striped button-up shirt. He  
2 has short hair a -- a beard.

3 THE COURT: Indicating the defendant.

4 BY MR. DeMATTIA:

5 Q Does he look anything like the picture you  
6 have in front of you, which was taken on May 8th of  
7 2004, like he appears today?

8 A No, he changed his hair and his face, the hair on  
9 his face.

10 Q When you found out he was Naeem Miller, did  
11 you also find out at that time that there was an arrest  
12 warrant for murder homicide out of Newark, New Jersey?

13 A Yes, I did.

14 Q Was he placed under arrest at that time?

15 A Yes, he was.

16 Q Approximately how far is Scranton,  
17 Pennsylvania from Newark, New Jersey?

18 A Roughly about an hour and a half.

19 Q Mileages is, do you know?

20 A I don't know.

21 MR. DeMATTIA: Okay. No further questions,  
22 sir.

23 THE COURT: Cross-examine.

24 MR. GORDON: No questions of this witness,  
25 Your Honor. I would like to be heard at sidebar.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 41

Sidebar

80

1 THE COURT: Thank you, Officer. You're  
2 excused.

(Sidebar)

3  
4 MR. GORDON: Judge, I object to the  
5 prosecutor asking questions of these witnesses about  
6 the photograph of Mr. Miller on how he looks now versus  
7 how he looks then, and I think it's wholly  
8 inappropriate for the prosecutor to represent to this  
9 court during the motion in limine that these witnesses  
10 were to be called for a limited purpose. And I think  
11 The Court agreed to admit their testimony only for a  
12 limited purpose, and that limited purpose was  
13 exclusively to support the State's theory of flight in  
14 this case, and as a result it was my impression that  
15 the testimony would be limited to flight. Now it  
16 appears what's occurred is that the State, in  
17 attempting to repair the damage done by Mr. Davis's  
18 failure to make an in-court identification is  
19 attempting to use these officers to compare Mr.  
20 Miller's appearance in May of 2004 to his appearance in  
21 court today, and I don't see how there's any relevance  
22 to flight in that attempt by the State. In fact, it's  
23 really going directly out of bounds of what this  
24 testimony was for, and as a result now I assume the  
25 State's going to offer that photograph into evidence,

Sidebar

81

1 and unless the State is arguing that that photograph  
2 appears different than the photograph identified by  
3 Stacy Davis in December of 2001 I can't imagine how it  
4 would be probative on the issue of flight. It's only  
5 probative on the issue of Mr. Davis's failure to make  
6 an identification in court. And so my motion is for  
7 The Court to strike that testimony and advise the jury  
8 to disregard it because it's prejudicial in the sense  
9 that it's outside the bounds that The Court itself set  
10 up for the testimony.

11 THE COURT: It's highly probative not for  
12 many purposes, but highly probative on the issue of  
13 flight and it's entirely probative on the issue of  
14 flight because it's clearly at issue whether or not  
15 this is the guy who actually fled. Okay?

16 MR. DeMATTIA: I would just like to also say  
17 that he termed it damage done by Stacy Davis. He  
18 shouldn't draw conclusions at this particular time as  
19 far as he's talking with me with regard to my case.

20 THE COURT: Well, he can draw any conclusion  
21 he wants. It's not -- Well, okay. Then that's --  
22 Whatever he thinks is whatever he thinks, but clearly  
23 the evidence is --

24 MR. DeMATTIA: Is probative.

25 THE COURT: It's probative.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 42

Sidebar

82

1 MR. DeMATTIA: Sure, Judge. I have no  
2 further witnesses.

3 THE COURT: Even on the issue -- even on the  
4 issue of flight. Okay?

5 MR. DeMATTIA: I have no further witnesses.  
6 Do you want me to rest now or do you want me to  
7 formally rest tomorrow just in case --

8 THE COURT: No, rest now so the jury knows  
9 that that's done. What about moving items into  
10 evidence?

11 MR. DeMATTIA: Yes. I thought you would like  
12 to do that off the record so we could argue as to  
13 what's --

14 THE COURT: I don't know, is there stuff to  
15 argue?

16 MR. DeMATTIA: I'm sure he would want some  
17 things to object to.

18 THE COURT: Okay. Well then rest subject to  
19 moving items into evidence, we'll talk about what those  
20 items are, and then in the morning you could move them  
21 into evidence.

22 MR. DeMATTIA: If you want to do it now.  
23 Whatever your schedule is.

24 THE COURT: Well, no, do you want the jury to  
25 hang around so you can --

Sidebar / Colloquy

83

1 MR. DeMATTIA: No, no, not at all.

2 THE COURT: We'll do it right after I excuse  
3 the jury.

4 MR. GORDON: And then we'll bring them back  
5 tomorrow?

(Sidebar concluded)

7 THE COURT: Okay. Mr. DeMattia?

8 MR. DeMATTIA: Your Honor, subject to the  
9 proffer of certain exhibits the State has no further  
10 witnesses. We would rest.

11 THE COURT: Thank you, Mr. DeMattia. What  
12 happens now we've moved quite expeditiously. What  
13 happens now is there are a number of things that have  
14 to take place prior to taking any further steps with  
15 regard to what occurs in your presence, including  
16 talking about what the charge to the jury will be, what  
17 evidence gets -- what material, tangible things, get --  
18 become part of the evidentiary record, get taken with  
19 you in the jury room. We also provide an opportunity  
20 -- and we're going to talk about that outside your  
21 presence -- to give the -- to provide an opportunity,  
22 should the defendant desire to produce any evidence  
23 before you to do that, but we don't know whether that's  
24 going to be the case until we have some other matters  
25 to do outside of your presence. So that means you get

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 43

Colloquy

84

1 to go home a little early today, and I'm sure that has  
2 you all broken up, but you still get your full \$40,  
3 even though you got to go home early. But don't forget  
4 to get your parking thing validated and you won't have  
5 to pay \$10 out of that big \$40 check in order to pay  
6 for your parking.

7 We're going to -- I anticipate some of that  
8 being done this afternoon outside your presence, and  
9 there is also some that may have to be done tomorrow  
10 morning before you arrive. Add to that the fact that  
11 somehow or another I managed to get assigned the job of  
12 orienting the jury -- the new jurors that are coming in  
13 tomorrow morning, so I might not be able to start at 9  
14 o'clock either -- I'll be down there. So I'm going to  
15 excuse you now for the day and ask you to please return  
16 tomorrow morning at 10 o'clock and we'll be -- we'll be  
17 on the home stretch. Okay? Thank you. Please don't  
18 discuss the case among yourselves or with anybody else.  
19 While the State has rested its case there's still much  
20 more for you to hear before you can begin the process  
21 of deliberation. Don't visit the scene, do your own  
22 investigation, don't talk to anybody about the case.  
23 If anybody attempts to talk to you about the case,  
24 report that to me, not to your fellow jurors. Have a  
25 good evening. We'll see you tomorrow morning at 10

Colloquy

85

a.m.

(Jury excused)

(Off the record. Back on the record.)

1 THE COURT: Back on the record outside the  
2 presence of the jury. Mr. DeMattia, you have items you  
3 want to move into evidence.

4 MR. DeMATTIA: Yes, Your Honor. I believe  
5 both yourself and Mr. Gordon should have an accurate --  
6 maybe one or two errors -- but an accurate catalog of  
7 the evidence. Starting with S-4, Your Honor, subject  
8 to -- I'm sorry -- S-3, subject to certain language  
9 being redacted, I would move the wanted poster of Naeem  
10 Miller that was distributed in the neighborhood into  
11 evidence. There is some objectionable language in  
12 here. The objectionable language is the suspect  
13 possibly is a member of the Blood Street Gang. He is  
14 also wanted by East Cleveland, Ohio P.D. for murder.  
15 The suspect is considered armed and dangerous. That's  
16 my position. Everything else I believe is acceptable  
17 subject to naturally argument.

18 MR. GORDON: Judge, I think there should be a  
19 redaction. The redaction, I don't know -- Your Honor  
20 doesn't have this in front of you, I know.

THE COURT: Okay.

MR. GORDON: I -- I would -- I would agree

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 44

Colloquy

86

1 that this item can be moved into evidence subject to  
2 redaction. I would -- I would just indicate I think  
3 the redaction should end after the sentence "Another  
4 individual was shot once in the leg." It then goes on  
5 to say "Suspect frequents the areas of Bergen Street,  
6 Hunterdon Terrace, Hunterdon Street, Renner Avenue and  
7 Goodwin Avenue in Newark." We don't know the source of  
8 any of that information, Judge, and so I think -- I  
9 think, to be on the safe side, what should be redacted  
10 is everything beginning with the words "the suspect  
11 frequents" down to the bottom of the paragraph.

12 MR. DeMATTIA: Your Honor, I'll give it to  
13 you now so that you could see, but I would argue  
14 against that type of redaction because I had witnesses  
15 that established his residence through Felicia Wright,  
16 established his, what did she say, thousands of times  
17 in that area that she had seen him. We mentioned the  
18 streets specifically, and if I have to prove flight,  
19 Your Honor, I have to prove where we went in to go find  
20 him where he would obviously be frequenting.

21 THE COURT: S-3 is in evidence with the  
22 redaction as proposed by Mr. DeMattia. Okay. What  
23 else?

24 MR. DeMATTIA: Your Honor, S-4 and S-4A, 4 is  
25 the small photograph of the front, S-4A is the big

Colloquy

87

1 blowup of the front of 966 Bergen Street.

2 MR. GORDON: No objection.

3 THE COURT: S-4 and S-4A in evidence.

4 MR. DeMATTIA: Your Honor, then S-7 through  
5 14 -- 15 -- actually 16, S-7 through 16, 7 through 14  
6 specifically being a photograph of each shell casing  
7 recovered, and S-15 and 16 being the bullets recovered  
8 from the body, as described by Dr. Lila Perez.

9 MR. GORDON: No objection.

10 THE COURT: S-7 through 16 in evidence.

11 MR. DeMATTIA: Your Honor, only for the -- I  
12 don't believe we need the blowup of -- I'm referring to  
13 S-18, S-18 being the two pages of the injuries to the  
14 victim testified to by Dr. Perez. I don't believe we  
15 need the blowup of those two injuries -- of those  
16 several injuries. I would move that into evidence.

17 MR. GORDON: No objection.

18 THE COURT: S-18 in evidence.

19 MR. DeMATTIA: Your Honor, S-20 is a  
20 photograph of defendant identified by Felicia Wright,  
21 subject to, I guess, me sanitizing this, the bottom  
22 portion of the photograph where it says Essex County  
23 Sheriff's Office VCI, language to that effect. I think  
24 that's fair.

25 MR. GORDON: Judge, I would just ask that all

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 45

Colloquy

88

1 typed material on this exhibit be redacted.

2 THE COURT: All typed?

3 MR. DeMATTIA: All printed, yes, Judge.

4 THE COURT: Okay. S-20 in evidence, as  
5 redacted.

6 MR. DeMATTIA: Okay. S-21 and 21A,  
7 photographs identified by Stacy Davis, the envelope and  
8 the six photographs, I guess likewise with the bottoms  
9 of all the photographs cut off indicating photos  
10 Sheriff's Office.

11 MR. GORDON: Judge, no objection, conditioned  
12 on the redaction of any typed or printed material under  
13 the photos.

14 THE COURT: S-21 and S-21A, as redacted, in  
15 evidence.

16 MR. DeMATTIA: Your Honor, S-22 has been  
17 previously marked, the gun permit search for the  
18 indices of gun permits in the County of Essex, Naeem  
19 Miller.

20 THE COURT: Mr. Gordon?

21 MR. GORDON: Your Honor, I'm assuming that  
22 the State is offering that pursuant to The Court  
23 recognizing it as an official document. With that  
24 condition then no objection.

25 MR. DeMATTIA: It's a self-authenticating

Colloquy

89

1 document, Judge.

2 THE COURT: S-22 in evidence.

3 MR. DeMATTIA: S-25, a photograph of Stacy  
4 Davis's ankle.

5 THE COURT: Any objection?

6 MR. GORDON: One second, Your Honor. No, no  
7 objection to S-25.

8 THE COURT: S-25 in evidence.

9 MR. DeMATTIA: And finally, Your Honor, S-27,  
10 the photograph by the Scranton Police Department with  
11 all the print deleted through, I guess, the scissors,  
12 as identified by one of the Scranton police officers,  
13 which I think it was Officer Charles.

14 THE COURT: Mr. Gordon?

15 MR. GORDON: Again, Judge, I'll be brief. I  
16 know The Court had heard me on this issue at sidebar,  
17 but just to clarify it for the record. I think that in  
18 light of the fact that these officers were only  
19 permitted to testify as to flight evidence I don't  
20 believe this is relevant to flight or probative of  
21 flight. If the State is -- is not asserting, I don't  
22 believe, that the picture that was identified by Stacy  
23 Davis on December 21st of 2001 and the photo of Mr.  
24 Miller taken by the Scranton Police on May 8th of 2004,  
25 is substantially different. I don't think the State is

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 46

Colloquy

90

1 alleging that Mr. Miller changed his appearance between  
 2 the date of the identification and the date of his  
 3 arrest, and so I don't think the time period from the  
 4 date of the arrest until today is the relevant time  
 5 period as to flight, and so I don't think it's  
 6 probative as to flight. That's the limited purpose for  
 7 which this testimony from Scranton, Pennsylvania was  
 8 put in and, therefore, I don't believe that it's  
 9 probative of flight and I would object to it on that  
 10 basis.

11 THE COURT: Well, I don't know, and it's not  
 12 necessary for me to reach the issue as to whether it's  
 13 probative of anything else and, if so, is it not  
 14 admissible because of the -- the nature and extent of  
 15 the initial ruling as a result of the motion in limine.  
 16 I don't have to answer that really because from what I  
 17 can see it's clearly probative as to the issue of  
 18 flight. I mean, nothing could be more probative than  
 19 -- than evidence that substantiates the claim by the  
 20 State via these officers that this defendant as he  
 21 appears now is, in fact, the individual who had contact  
 22 with the Scranton police officers that date in May.  
 23 And I think the picture goes to that question and,  
 24 therefore, S-27 is in evidence.

25 MR. GORDON: Judge, could I just ask for one

Colloquy

91

1 point of clarification for the record?

2 THE COURT: Okay?

3 MR. GORDON: The Court recognized, and  
 4 obviously the witnesses identified the defendant in  
 5 court as being the person in court as being the person  
 6 that they arrested in May of 2004. Is The Court's  
 7 ruling that the photograph is necessary evidence or  
 8 probative evidence of that fact over and above the  
 9 actual in-court identification?

10 THE COURT: Yes.

11 MR. GORDON: In other words, that the State  
 12 could establish it by way of what they have already  
 13 established it by that this person is the person they  
 14 arrested, not -- with no connection to the photo at the  
 15 time.

16 THE COURT: Yes, the State is entitled to  
 17 meet their burden of proof as to identity, or attempt  
 18 to meet their burden of proof as to identity not only  
 19 with in-court identifications, but with admissible out-  
 20 of-court identifications.

21 Anything else, Mr. DeMattia?

22 MR. DeMATTIA: I believe, Your Honor, that's  
 23 it.

24 THE COURT: Okay. That's the State's case.  
 25 Mr. Gordon, do you wish to be heard?

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
 973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 47

Argument - Gordon

92

1 MR. GORDON: Judge, I'm moving for a judgment  
 2 of acquittal for Naeem Miller on each and every count  
 3 of this indictment pursuant to STATE VS. REYES -- R-e-  
 4 y-e-s, and applicable court rules. Your Honor, it's my  
 5 understanding that the standard that The Court must  
 6 utilize in this matter for the purposes of this motion  
 7 is to give the State the benefit of all the favorable  
 8 testimony, all inferences that could be drawn from that  
 9 testimony I respectfully submit that no reasonable jury  
 10 could find Naeem Miller guilty of the crime of knowing  
 11 and intentional murder in this case. Based upon the  
 12 facts that have been elicited, it appears that there  
 13 are only two alleged eyewitnesses to the actual  
 14 shooting, although I guess Mr. Phillips is a  
 15 possibility, although Mr. Phillips indicated clearly  
 16 that he did not see the shooter, didn't even really  
 17 give a very detailed description of the shooter. The  
 18 witness Ms. Felicia Wright indicated that she saw Naeem  
 19 Miller with a gun. I submit to Your Honor that based  
 20 upon her statements under oath the testimony that was  
 21 elicited from her, it was clear that she was not able  
 22 to make a firm identification. Although she did make  
 23 an out-of-court identification, it appeared that the  
 24 testimony indicated that she was not sure of that  
 25 identification and that I think her words were words

Argument - Gordon / DeMattia / Decision

93

1 from the street or other things may have contributed to  
 2 what she said was an identification. Mr. Davis clearly  
 3 today indicated that he could not identify Naeem Miller  
 4 as the person that he saw with the gun on that date.  
 5 As a result of that I respectfully submit that a  
 6 judgment of acquittal is appropriate and I would submit  
 7 to Your Honor.

THE COURT: Mr. DeMattia?

8 MR. DeMATTIA: Your Honor, there have been  
 9 identifications of this defendant Naeem Miller as he  
 10 appeared on the day in question. There is no question  
 11 that the witnesses have indicated that it is him  
 12 despite a change in appearance, whether intentional or  
 13 unintentional. I could argue whatever I deem  
 14 appropriate at the time of my summation. But besides  
 15 identity we have the autopsy report, the testimony from  
 16 Dr. Perez. The reasonable inferences to give the State  
 17 at this particular time with regard to the testimony  
 18 certainly I think the State is entitled for it to go  
 19 forward into the next phase.

20 THE COURT: Thank you. Clearly based upon  
 21 the testimony of the individuals who were offered here  
 22 today, and in its totality, giving all appropriate  
 23 inferences to the benefit of the State, a reasonable  
 24 jury could very well find that the defendant Naeem  
 25

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
 973-283-0196 FAX 973-492-2927



## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 48

## Decision / Colloquy

94

1 Miller is, in fact, the individual who committed the  
2 crimes charged and, as such, the defendant's motion is  
3 denied.

4 Mr. Gordon, is it premature or -- it's  
5 entirely up to you -- do you want to wait until the  
6 morning to voir dire Mr. Miller about his testimony?

7 MR. GORDON: Your Honor, respectfully I  
8 believe tomorrow morning would be more appropriate.

9 THE COURT: All right. Similarly, can we at  
10 least preliminarily or, ordinarily we don't do this  
11 until the close in its entirety or in its formal phase,  
12 but it is my practice to discuss potential charges  
13 right from even prior to the jury selection, which I  
14 believe you have, in fact, done. You've discussed it  
15 with Ms. Lawson as well as with me. Perhaps we can do  
16 it on a more formal basis now and then put the last  
17 finishing touches on it at the end of the -- at the end  
18 of the introduction of evidence. Any objection?

19 MR. DeMATTIA: I would like to try to do it  
20 now, Your Honor.

21 MR. GORDON: We can do it now, Your Honor.  
22 Do you want to do it on the record at this point or  
23 speak informally first?

24 THE COURT: Let's do it on the record now  
25 and, you know, we'll do it once more very briefly on

## Charge Conference

95

1 the record at the close of the evidence.

2 Non-2C charges that I see is prior conviction  
3 of a witness, flight, expert testimony, in- and out-of-  
4 court I.D., photo I.D. Any other non-2C charges?

5 MR. GORDON: Your Honor, false-in-one/false-  
6 in-all.

7 THE COURT: Well, that's sort of part of the  
8 regular charge anyway, but --

9 MR. DeMATTIA: It's part of --

10 THE COURT: Excuse me?

11 MR. DeMATTIA: -- part of the generic charge.

12 THE COURT: Yes.

13 MR. GORDON: Also, Judge, just with regard to  
14 the photos, clearly we know that the testimony from the  
15 Scranton Police is that they took the photo upon  
16 arresting Naeem Miller, but the earlier photo I think  
17 the jury should be instructed, as always, with regard  
18 to the mug shot -- the mug shot instruction.

19 THE COURT: Yes, that's photo I.D. is that  
20 instruction.

21 MR. GORDON: That's -- that's fine.

22 THE COURT: Okay? Nothing else? All right.  
23 You'll see more final versions of those charges before  
24 you sum up. As to 2C charges I don't see anything  
25 remarkable. Is anybody requesting lesser included on

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 49

## Charge Conference

96

1 any of the charges?

2 MR. DeMATTIA: Your Honor, I don't believe as  
3 far as the murder charge is concerned that there is any  
4 evidence which you could logically base a lesser  
5 included offense of aggravated manslaughter, reckless  
6 manslaughter, passion provocation manslaughter.  
7 However, with regard to the aggravated assault charge  
8 -- I mean with regard to the injury I just throw it out  
9 that you may possibly have serious bodily injury for  
10 the second degree, serious bodily injury -- I'm sorry  
11 -- serious bodily injury, then reckless bodily injury  
12 -- that's, I believe, a third degree. You might want  
13 to consider some form of lesser for the aggravated  
14 assault.

15 MR. GORDON: I concur with that, Your Honor.

16 THE COURT: Okay. To what -- How far do you  
17 suggest we go with that?

18 MR. DeMATTIA: I -- I can't really see simple  
19 assault, Your Honor. I could see recklessly causing  
20 bodily injury for a possible third degree -- a second  
21 degree aggravated assault, a third degree aggravated  
22 assault, and that's my contribution. If Mr. Gordon  
23 would like it to go further than that --

24 MR. GORDON: I -- I can't see it going  
25 further than that either, in all candor, Your Honor. I

## Charge Conference

97

1 think the nature of the testimony, if it's accepted,  
2 involving recklessness with a deadly weapon and all  
3 that, I think that simple assault probably is not  
4 indicated as a lesser included.

5 THE COURT: Thank you. All right. I agree.  
6 No lesser included as to murder and the one lesser  
7 included, the -- on the aggravated assault. You can  
8 also anticipate having an opportunity to view the  
9 Powerpoint slides prior to your closing statements.  
10 I'll ask you to please make any comments with regard to  
11 those slides as soon as you've had an opportunity to  
12 look at them. So you know, if you don't already know,  
13 my practice is to fully develop the Powerpoint  
14 presentation, give you an opportunity to view the  
15 slides prior to closing so you know what it is not only  
16 what the jury is going to be hearing but what it is  
17 they're going to be looking at before you make your  
18 closing statement. It is also my practice to give the  
19 jury a binder which contains the actual written charge,  
20 and during the course of the charge I explain to them  
21 that the actual written charge that I read to them is  
22 in fact the charge to the jury and any other items,  
23 including the Powerpoint presentation, is a means to  
24 aid them, a system, but the actual charge is the actual  
25 charge.

Elite Transcripts, Inc.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005

SHEET 50

Charge Conference

98

1 If anybody has any comments about that, any  
2 objections to that, now is the time to be heard. Of  
3 course you'll be heard again if there are specific  
4 problems with any specific item after you've had an  
5 opportunity to view it. Does anybody have anything?

6 MR. GORDON: No, Your Honor.

7 THE COURT: Anybody have anything that I  
8 haven't already talked about?

9 MR. GORDON: No, Your Honor.

10 THE COURT: Okay. So we'll -- unless  
11 something changes I'll ask you once again to concur  
12 with regard to the proposed charge and jury verdict  
13 sheet before you sum up and then obviously once again  
14 before it goes into the jury. We'll talk to Mr. Miller  
15 tomorrow about whether or not he's going to testify.  
16 We will also want to know from you, Mr. Gordon, if Mr.  
17 Miller doesn't testify whether you are requesting the  
18 charge relative to the right of the defendant not to  
19 testify. Okay?

20 MR. GORDON: Yes, Your Honor.

21 THE COURT: Anybody have anything else?

22 MR. GORDON: No, Your Honor.

23 THE COURT: All right. So we'll see you at  
24 about 9:30 tomorrow so we can make sure we have  
25 everything else wrapped up and ready to go so we know

Charge Conference

99

1 where we're going at 10 o'clock when the jury shows up.  
2 Okay?

3 MR. GORDON: Thank you, Your Honor.

4 THE COURT: Thank you very much. Have a good  
5 evening, everyone.

6 (Proceedings concluded)

Elite Transcripts, Inc.

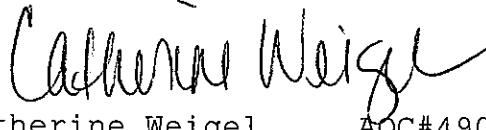
14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

**STATE OF NEW JERSEY v NAEEM MILLER -- March 29, 2005**

SHEET 51

**CERTIFICATION**

I, Catherine J. Weigel, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Essex County Superior Court, on March 29, 2005, Tape No. 2, Index No. 10:12:53 - 14:51:29, is prepared in full compliance with the current transcript format for judicial proceedings and is a true and accurate compressed transcript of the proceedings as recorded to the best of my knowledge and ability.



Catherine Weigel AOC#490  
ELITE TRANSCRIPTS, INC.  
BUTLER, NEW JERSEY 07405

September 12, 2005

**Elite Transcripts, Inc.**

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927